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Current Topics.

Abraham Lincoln as a Lawyer.

THE STATESMANSHIP displayed by ABRAHAM LINCOLN as President of the United States at an extremely critical period in his nation's history is apt to make us forget that before he reached that exalted position he had been for a good many years in active practice as a member of the legal profession. It was, so we are told, a chance finding of a copy of "Blackstone's Commentaries" that turned his thoughts to the law as a vocation in which he was destined to win his first fame. Memories of his skill and success as an advocate are still current in America, invested with a fresh interest by reason of his subsequent distinction, and several of these are recalled in an interesting paper contributed to the current number of the *American Bar Association Journal* by one who personally saw him in one of his earliest cases. In the index to later editions of an English law book, "Ram on Facts," the contributor in question found the following entry: "Lincoln, President Abraham, how he procured an acquittal by a fraud, 269 n," and at the page indicated the following note: "In Lanion's Life of Abraham Lincoln, p. 327, an account is given of Mr. Lincoln's defence of a man named Armstrong, under indictment for murder. The evidence against the prisoner was very strong. But, says the biographer, the witness whose testimony bore hardest against Armstrong, swore that the crime was committed about eleven o'clock at night and that he saw the blow struck by the light of a moon nearly full. Here Mr. Lincoln saw his opportunity. He handed to an officer of the court an almanac, and told him to give it back to him when he should call for it in the presence of the jury. It was an almanac of the year previous to the murder. Mr. Lincoln made the closing argument for the defence, and in due time he called for the almanac, easily proved by it that at the time the main witness declared the moon was shining in great splendour there was in fact no moon at all but black darkness over the whole scene. In the roar of laughter and undisguised astonishment succeeding this apparent demonstration, court, jury and counsel forgot to examine that seemingly conclusive almanac and let it pass without question concerning its genuineness." The story that LINCOLN virtually manufactured the testimony which led to his client's acquittal seems to have been set afloat during his first Presidential campaign by some cowardly opponent; it has repeatedly been exposed; and now in the article in question the writer, who was in court during the trial, says that he saw LINCOLN show the almanac to the prosecuting counsel and then hand it to the jury for their inspection. It was in fact an almanac for the year of the alleged crime. The story is, of course, inherently improbable, but it is good to have direct testimony as to its falsity. Like other great men, LINCOLN had his detractors, who had no scruples as to the kind of charges they brought against him, but this odious imputation against his professional rectitude has failed completely, and for us who can claim him as a distinguished *confrère*, he remains, as he has long been to the majority of his countrymen, "honest Abe."

British Patents in the Irish Free State.

A DECISION which we cannot but view with considerable alarm was last week given by Mr. Justice MEREDITH in the Dublin High Court. The case was *The British Thomson-Houston Company, Ltd.* v. *Litton & Co.*, in which the plaintiffs sued for an injunction to restrain the defendants from making and selling certain articles in infringement of the plaintiffs' letters patent. The learned judge's ruling (as far as we have been able to gather from the fragmentary reports so far to hand) was to the effect that since the Irish Free State Act, 1922, had come into force, letters patent under the seal of the British Patent Office could not now confer monopolistic privileges in the territory of the Irish Free State. A power to grant such privileges, MEREDITH, J., pointed out, would be inconsistent with the status of the Irish Free State under the Treaty and the Constitution.

The position created by this decision is, of course, a serious one as far as British patentees are concerned. A Bill providing

for the legislation of British patents in the Free State was introduced as a Government measure by the Dail Eireann last year. The amendments introduced to that Bill, however, proved so numerous that it had to be dropped before the end of the year. The decision of MEREDITH, J., was only given last week and already a new Bill has been introduced in the Dail having for its main object the validating of all British patents in the Irish Free State as from 7th December, 1921.

Obiter dicta and their Value.

IN THE volume of "Cambridge Legal Essays," recently written and presented to Dr. BOND, Professor BUCKLAND and Professor KENNY, by a number of their past and present colleagues and pupils, Mr. A. L. GOODHART, the new editor of the *Law Quarterly Review*, contributes an extremely interesting and valuable paper on "Liability for the Consequences of a Negligent Act," based mainly upon an examination of *Smith* v. *London & South Western Rly. Co.*, 1870, L.R. 6 C.P. 14, and the more recent decision of the Court of Appeal in *In re Polemis and Furness, Withy & Co.*, 1921, 3 K.B. 560. In dealing with the last-named case the learned contributor says that, in its discussion, in the Court of Appeal, a dictum of Lord SUMNER, in *Weld-Blundell* v. *Stephens*, 1920, A.C. 956, was cited, "the case itself admittedly not being in point," and then he slyly slips the following into a footnote: "*cf.* Lord Sumner in *Sorrell* v. *Smith*, 1925, A.C. 700, at p. 743: 'No guidance' is more misleading, no 'kindly light' is more a will-o'-the-wisp than an *obiter dictum* sometimes contrives to be . . . .'" From this it would appear that neither Lord SUMNER nor the learned contributor in question places a high value on *obiter dicta*. In this they are at one with Lord BOWEN, who said in *Cooke* v. *New River Co.*, 1888, 38 Ch. D. 56, 71: "I believe by long experience that judgments come with far more weight and gravity when they come upon points which the judges are bound to decide, and I believe that *obiter dicta*, like the proverbial chickens of destiny, come home to roost sooner or later, in a very uncomfortable way, to the judges who have uttered them, and are a great source of embarrassment in future cases." By the irony of circumstances, that great lawyer, in the same case, forgetful of the homing instinct of chickens and *obiter dicta*, nevertheless gave expression to several *dicta* which, in *Northern Theatres Co.* v. *Shillito*, 1925, 2 K.B. 100, were found unacceptable and treated as of no binding force. The plain man is inclined to ask, are *obiter dicta* then of no value? Are they, as an American lawyer of a cynical turn termed them, merely "the passing opinion of a judge expressed when it is not called for," and so to be entirely disregarded? Academically, we know that they are without authority; practically, they are often of great value in the absence of direct decision, their value, of course, depending very largely upon the judicial esteem of him who uttered them. The *dicta* of great judges like Baron PARKE and Lord BLACKBURN and Sir GEORGE JESSEL, are not to be airily dismissed as of no consequence, especially when we remember that they were not thrown out at random but were the result of long study and experience, and, if not absolutely necessary to the decision of the particular case, they were usually germane to the point under consideration. *Obiter dicta* have a value which, however, has to be weighed carefully before we can incorporate their contents into the fabric of the law.

The Right to Kill a Burglar.

THE AUTHORITIES as to killing in defence of person and property are collected and discussed in "Archbold's Criminal Pleading," 26th ed., pp. 886-7. By the common law, killing in self-defence is not murder (provided, of course, that the alternative of flight from the assailant is not possible), and defence of a house is on the same footing. Some doubt as to the law having been raised, an Act of Parliament was passed in 1532, 25 Hen. VIII, c. 5, directing acquittal of anyone charged with killing a person attempting to commit murder or burglary. On this was decided *Cooper's Case*, 1640, Cro. Car. 544, though, oddly enough, in two somewhat similar instances a few pages further back, namely, *Cook's Case*, p. 537, and *Levett's Case*, p. 538, the statute was not cited. It was repealed by the Offences Against the Person Act of 1828 and re-enacted with somewhat less verbosity by s. 10, which is now replaced by s. 7 of the Act of 1861. The principle, of course, is the dominant necessity of preventing someone who may reasonably be regarded as extremely dangerous and violent from carrying out a felonious purpose. As stated by DOE, J., in *Aldrich* v. *Wright*, 1873, 16 Am. Rep. 339, at p. 345: "In defence, it may be reasonable that a man should strike quicker for human life than for property; that he should strike quicker at an habitual fighter, professional robber, or notorious assassin, from whom there would be reason to expect sudden or extreme violence, than at a man previously inoffensive . . . the consequences of shooting, compared with the consequences of not shooting, are material to be considered on the question when he should shoot, as well as on the question whether shooting is a defence of a reasonably necessary kind. No doubt if it is possible to disarm or disable a burglar either entering a house or at work in it without hurting him that should be done, but in the ordinary case it may not be possible, for, even on the challenge to surrender, he might get in his shot first. Thus the householder, or anyone living in the house attacked, may lawfully shoot so long as the offender is either within the house or trying to get in by force. If he is fleeing with his booty he may be shot, not to recover it, but to arrest him for due process of law—again, if no gentler expedient is available. Should it be possible the attempt should be made to induce him to stop voluntarily, though probably it would be unsuccessful."

Sea Marriages.

SOME CONSTERNATION appears to have been caused in America by a ruling of Mr. Justice PARKER that the masters of Government-owned merchant vessels have no authority to perform marriages at sea. According to the opinion given, "the master had no greater authority than a passenger." It was thought possible, however, that marriages so performed might be valid under the marriage statutes of the States in which the ships were registered. There appears to be no Federal marriage law.

For marriage on a British ship, *R.* v. *Millis*, 1844, 10 Cl. & F. 534, still appears to make the presence of a clergyman indispensable, unless, perhaps, there is a finding of a "marriage of necessity," such as that of Adam and Eve, or the young couple in the "Blue Lagoon." *R.* v. *Millis* was not a case of marriage at sea, but *Du Moulin* v. *Druitt*, 1860, 13 I.C.L.R. 212, was; and it was there held that a marriage celebrated by the commander of a ship which carried no one in holy orders was void. Assuming, however, that *R.* v. *Millis* would be disapproved in the United States, as it has been in Canada (see *Breakey* v. *Breakey*, 1845, 2 U.C.Q.B. 349), it is somewhat difficult to follow the ruling. Mr. BISHOP ("Marriage and Divorce," vol. I, p. 389) says that, where there is no local law of marriage applicable, parties may marry in their own forms, giving the reason that no one should be deprived of the privilege of marriage. If therefore no Federal law was applicable, the inference would be that the law of the State in which the parties were domiciled would be the dominant factor, though the question how far the law of a particular State applied to an American ship registered in one of its ports is not one on which an English lawyer can presume to offer an opinion. Perhaps some Scottish or other authority on the conflict of laws can answer the conundrum here propounded, as to whether *R.* v. *Millis* applies to a ship registered in Glasgow or elsewhere north of the Tweed. This seems to be a somewhat similar problem to Mr. Justice PARKER'S, for, for the purposes of international law, a ship is British, not English or Scottish.

Specific Cause and Relief from Income Tax.

THERE are not many authorities which deal with the meaning of the expression "specific cause," which appears in Rule 11, of the Rules applicable to Cases I and II of Schedule D of the Income Tax Act, 1918, and reference may therefore be made to the latest decision thereon—a decision of the Court of Appeal. *Elliott* (*Inspector of Taxes*) v. *The Duchess Mill Limited*, *Times*, 14th July, 1926.

In that case the Duchess Mill Limited had been incorporated for the purpose of taking over the assets and business of a company known as the Duchess Spinning Co. Limited. The old company had been exceedingly prosperous, owing to an extraordinary boom in the cotton trade and in trade generally, throughout the United Kingdom, but on its absorption into the new company, a severe depression occurred in the cotton trade and in trade generally, with the result that there was a falling off in the price of spot cotton amounting to nearly two shillings per pound, and a similar falling off in the price of yarn, these being commodities in which the company chiefly dealt. Through these causes, there was a considerable drop in the takings of the new company when compared with the old. The company accordingly contended that it was entitled to relief from taxation.

Now the relevant provisions in the Income Tax Act, 1918, are as follows: Rule 11 of the Rules applicable to Cases I and II of Schedule D, provide that: "If within the year of assessment or the period of average upon which the assessment is to be based a change occurs in a partnership of persons engaged in any trade or profession, by reason of death, or of dissolution of the partnership as to all or any of the partners, or by the admission of a new partner, if any person succeeds to a trade or profession, and the expression "person" will include a company (*cf.* R 1 of the General Rules, and s. 257 of the Income Tax Act, 1918), the tax payable in respect of the partnership or any of the partners, or of the person so succeeding shall be computed according to the profits or gains of the trade or profession during the respective periods prescribed by this Act, notwithstanding the change or succession, unless the partners or the person succeeding to the trade or profession prove to the satisfaction of the commissioners, that the profits or gains have fallen or will fall short from some specific cause, to be alleged to them, since such change or succession took place, or by reason thereof."

Reference should be made to *Inland Revenue* v. *Fairlie*, 16 S.L.R. 189. The respondent in this case had succeeded to a colliery upon the death of his father in September, 1876. It was proved that the profits of the colliery for the years 1877-8 had fallen short of the average yielded during the preceding three years, owing to a severe depression in the coal trade. The Lord President in dealing with the meaning of specific cause said (*ib.*, at p. 192): "It may mean that the specific cause to be proved is a cause which has occurred since the succession, or it may mean that a specific cause may be proved to the satisfaction of the commissioners, whether occurring before or after that change, if it be proved that the profits and gains have fallen short since the change took place; and it appears to me that the latter interpretation is clearly the sound one." The Lord President then goes on to declare that in his opinion the depression in the coal trade constituted such a "specific cause," an opinion with which, the other members of the court agreed. It might be noted that the Court of Appeal in *Elliott* v. *The Duchess Mill Co. Limited*, agreed with the view taken above by the learned Lord President to the effect that it is not necessary to show that the specific cause arose after the succession.

Another instance in which a trade depression in the particular trade was held to constitute "specific cause" is afforded by *Ryhope Coal Co., Ltd.* v. *Foyer*, 1881, 7 K.B.D. 485. In that case a partnership, which had been working coal mines for some time, became incorporated as a limited company, to which they sold the assets, subject to the liabilities, of the partnership. The commissioners found that since the transfer of the business the profits had fallen short owing to the extraordinary depression in the iron and coal trades, whereby the company was unable to sell either so large a quantity of coal as had been done in the past, or to obtain anything like so good a price therefor. The court held that the profits had fallen short from a "specific cause," so as to entitle the company to relief.

The judgment of Mr. Justice GROVE in this case is of importance, because it does attempt to give some definition of the expression "specific cause. "I expressed during the argument," said the learned judge (*ib.*, at p. 496), "very considerable doubt whether the phrase 'specific cause' could apply to the ordinary fluctuations of trade. I certainly do not adopt the arguments of the appellants here and say that 'specific cause' means 'specified cause.' I do not think that is the proper meaning of the word 'specific' either in grammar or within this Act. A specific thing and a specified thing are to my mind totally different; I think 'specific cause' must be something capable of expression, but also something exceptional, it must not be the ordinary fluctuations incident to every business. The Scotch Court in the case which I have mentioned—*I.R.* v. *Fairlie*, *supra*—held that the depression of trade was a specific cause. I do not differ from them; in one sense I agree with them, except that I should put it thus, that depression of trade may be a specific cause but is not necessarily a specific cause. The specific cause must, I think, be something unusually exceptional and extraordinary, just as in those cases of damage done by floods, where the ordinary overflowing and annual flooding of the year is not considered an act of God, and an exceptional thing, but a flood which does not run for a century is so."

Again, LINDLEY, J., said in the above case of *Ryhope Coal Co., Ltd.* v. *Foyer*, 7 K.B.D., at p. 501: "A thing is specific as contrasted with something else and whether it is contrasted with trade in general or trade in a locality, or whether it means something confined to a particular mine, is all more or less doubtful . . ."

The Court of Appeal appear to have approved of the general principle of the two above-mentioned cases in holding, in *Elliott* v. *Duchess Mill Ltd.*, that the falling off in the profits was due to a specific cause, and the rules on this matter which are to be deduced from these cases may shortly be stated as follows:—

(1) The specific cause may be shown to have arisen either before or after the change or succession.

(2) Specific cause need not necessarily be something peculiar to and confined to the particular trade in question, but might apply to other trades as well in general. Thus it is not necessary to prove a depression in the particular trade which is being carried on. A general trade depression might equally constitute "specific cause."

(3) Specific cause, however, must be something unusually exceptional and extraordinary, and it must not be the ordinary fluctuations incident to every business.

As the Master of the Rolls indicated in his judgment in *Elliott* v. *Duchess Mill Ltd.*: "Fluctuations of trade had been clearly recognized in the Income Tax Acts, and that was why the principle of the three years' average had been adopted. In many cases it gave the trader genuine relief . . . It seemed not illogical to say that the system of taxing upon an average of three years (and sometimes in certain trades such as the coal trade five years had been taken), was to provide for the ordinary fluctuations incidental to business; but that did not necessarily exclude the fact that in the case of an extraordinary and abnormal depression there might be a state of things which was quite outside the ordinary case of business fluctuations."

Expulsion of Member of Club.

In view of the recent case of *Wright* v. *The Bath Club Company, Ltd.*, *Times*, 16th inst., it might be of advantage to examine the legal principles which relate to the expulsion of a member from a club or other unincorporated association. In that case the plaintiff claimed damages for wrongful expulsion from the Bath Club, and the defendants, by their defence, alleged that the expulsion was justifiable in view of the plaintiff's conduct in a controversy with Lord Gladstone, arising out of statements made by the plaintiff in a book, reflecting on the moral character of Lord Gladstone's father. It appeared that in August, 1925, the secretary of the club, on the instructions of the committee, recommended the plaintiff to resign, which he declined to do, and that in October of the same year, he was expelled. The plaintiff's ground of complaint was that no notice was sent to him that his conduct was the subject of complaint or investigation, that no opportunity was given to him of stating his case or appearing before the committee, and that no inquiry or no proper inquiry was held. Mr. Justice Horridge held on the uncontroverted evidence of the plaintiff that his expulsion was wrongful, and directed the jury accordingly.

The general principle of law is quite clear, that an unincorporated association of persons like a club, has no implied power to expel any of its members, and that consequently a member cannot in any case be expelled, unless there is provision in the rules for such expulsion. On the other hand, in the absence of any express provisions in the rules of the association, there is nothing to prevent a member from resigning without any consent of the other members: *Finch* v. *Oake*, 1896, 1 Ch. 409.

Where there is no rule which provides for the expulsion of a member, there is nothing to prevent an alteration of the rules for the purpose of making provisions with regard to expulsion, provided, of course, that the rules of the association do in fact provide that the rules may be altered and the manner in which they may be altered.

Thus in *Dawkins* v. *Antrobus*, 1881, 17 Ch. D. 615, one of the rules of a club provided that a general meeting might alter any of the standing rules affecting the general interests of the club, provided the same was done with certain formalities and by a certain majority. A rule was duly passed by a general meeting, providing for the expulsion of members whose conduct might be injurious to the interests of the club. It was held that the rule was validly passed by the general meeting.

The judgment of Jessel, M.R., might be referred to with advantage. With regard to the general principle of law on the subject of expulsion, the learned M.R. says (*ib.*, at pp. 620, 621): "There is no more inherent power in the members of a club to alter their rules so as to expel one of its members against the wishes of the minority, than there is in the members of any society or partnership which is founded on a contract, that written contract of course expressing the terms on which the members associate together; and it is intolerable to imagine that the majority should in such a case claim an inherent power of expelling the minority."

The jurisdiction of a court of law to interfere with the decision of members of clubs or other associations was thus defined by Lord Justice Brett as he then was in *Dawkins* v. *Antrobus*, *ib.*, at p. 630: "There is some danger," said the L.J., "that the courts will undertake to act as Courts of Appeal against the decisions of members of clubs, whereas the court has no right or authority whatever to sit in appeal upon them at all. The only question which a court can properly consider is whether the members of the club, under such circumstances, have acted *ultra vires* or not, and it seems to me the only questions which a court can properly entertain for that purpose are whether anything has been done which is contrary to natural justice, although it is within the rules of a club—in other words whether the rules of the club are contrary to natural justice; secondly, whether a person who has not condoned the departure from them has been acted against contrary to the rules of the club; and, thirdly, whether the decision of the club has been come to *bonâ fide* or not. Unless one of those charges can be made out by those who come before the court, the court has no power to interfere with what has been done" (*cf.* also *Baird* v. *Wells*, 44 Ch. D. 661.

It is clear, therefore, that an expulsion might be wrongful even where provision for such expulsion is made in the rules. If the rule with regard to expulsion is in itself contrary to natural justice, the above dicta of Brett, L.J., are authority for the proposition that the court will disregard that rule. If on the other hand the rule itself is *intra vires*, it is essential, in the first place, that also the condition with regard to expulsion, laid down in the rule as to notice, etc., should be strictly observed. A failure to observe the requisite condition in the least particular will invalidate the whole proceeding, and render the expulsion wrongful or void.

Assuming, however, that the rules have been observed to the letter, objection may rightfully be taken to the expulsion if the proceedings are not *bonâ fide*.

In considering the question of *bonâ fides* the court may not consider whether what was done was right or not, or whether what was decided was reasonable or not. The only question is whether it was done *bonâ fide*. The fact that the expulsion was unreasonable might, of course, be evidence of lack of *bonâ fides*, though it is by no means conclusive thereon (*cf.* per Brett, L.J., in *Dawkins* v. *Antrobus*, 17 Ch. D., at p. 630). The test would appear to be whether the expelling members have "acted from an honest and *bonâ fide* desire for the general interest of the members, and not from any indirect or sinister motive or spiteful animus" against the member expelled: *Tanteresi* v. *Molli*, 2 T.L.R. 731.

It is essential to the validity of any expulsion, and that too whether or not the rules make provision therefor, that the member whom it is proposed to expel should be given notice of the charge preferred against him. In *Labouchere* v. *Earl of Wharncliffe*, 13 Ch. D. 346, Jessel, M.R., said (*ib.*, at pp. 350, 351): "What ought the committee of a club to do when the conduct of one of its members has been impugned? They ought to see what that conduct has been, and what excuse or reason can be given by the member for it; and they ought to give notice to that member that his conduct is about to be inquired into, and afford him an opportunity of stating his case to them." Reference may also be made to *Gray* v. *Allison*, 25 L.T.R. 531, in which case the expulsion was considered by the court to be contrary to natural justice, inasmuch as no notice of the charge was given. The principle of these cases was again applied in *D'Arcy* v. *Adamson*, 29 T.L.R. 367, in which case the expulsion was held to be bad, inasmuch as the member in question had not been given notice of the real reasons upon which the committee had acted. "The committee of a club and all similar bodies," said Warrington, J. (*ib.*, at p. 368), "were in a *quasi* judicial position. The power of expulsion was a highly penal power, the exercise of which might inflict a stigma upon an individual, the results of which it was impossible to foresee, and it was an essential condition to the valid exercise of that power that the accused person should not be condemned and punished unheard. That point was dealt with in the cases of *Wood* v. *Wood*, L.R. 9 Ex. 190, and *Fisher* v. *Kearn*, 11 Ch.D. 353. It was a further condition to the due exercise of such a power that the accused person should not be accused of one thing and found guilty and punished for something else; he ought to have due notice of what it was the committee were going to consider for the suggested ground of expulsion and to have an opportunity of being heard."

The case of *Young* v. *Ladies' Imperial Club*, 1920, 2 K.B. 523, is a useful case, inasmuch as it deals with two important matters, viz., the summoning and the constitution of the

committee or other body which is to determine whether the member in question ought to be expelled.

In that case the plaintiff had made some remarks about another lady member of the club, which the latter naturally resented, and a committee was eventually constituted to determine whether the plaintiff should be expelled. The notice that was sent out to the members of the committee stated that the object of the meeting was "to report on and discuss the matter concerning [the plaintiff] and Mrs. L.," but made no express mention of expulsion. The court held that the notice was not sufficiently clear as to the object of the meeting being to determine whether the plaintiff should be expelled, and that on that ground alone the expulsion was bad. In his judgment Lord STERNDALE, M.R., said (*ib.*, at. p. 531): "I quite agree with what has been said . . . that one must not examine this agenda and these notices of meetings too particularly and too meticulously; if in substance they convey to the members of the committee what is going to be done, that is sufficient, although one might have thought that it might be better done. My inclination is to say that this is not sufficient . . ."

The other point raised in this case concerned the constitution of the committee. It was admitted that notice of the convening of the meeting was not sent to one member of the committee, the reason being that it was useless to send such a notice, since the member in question would not have attended the meeting, she having intimated, when she consented to remain a member of the committee, that she would be unable to attend the meetings of that body. The court, however, held that the omission to give her notice of the meeting, notwithstanding, invalidated the whole proceedings. In his judgment (*ib.*, at pp. 527, 528), Lord STERNDALE, M.R., said: "I cannot entertain any doubt that, with certain very limited exceptions, where a special meeting of a committee or any other body has to be specially convened for a particular purpose, every member of that body ought to have notice of and a summons to the meeting (*Smith* v. *Bailey*, 2 H.L.Cas. 789, 803; *Portuguese Consolidated Copper Mines*, 42 Ch. D. 160, 167) . . . As to the general principle, I think there can be no question. If the absent member of the body is at such a distance that it is physically impossible for him to attend in obedience to a summons, then the convener of the meeting is excused from sending the notice to that member, and without any such notice to him the meeting of the body will be properly convened. I incline to think, but I do not express any very definite opinion, that the same exception would probably be held good where it was undoubted that a member of the body was so dangerously ill that it was impossible for him to be moved, even although he might not be at a distance, and in *Re Portuguese Consolidated Copper Mines*, *supra*, it is also, I think, decided that a person who ought to be summoned cannot dispense the convener of the meeting from summoning him by saying 'I shall not be able to come; you need not summon me.' . . . I do not know of any other exception."

Before concluding, we may refer the reader to a useful summary of the above principles which is to be found in the judgment of Lord ATKINSON in *Thompson* v. *British Medical Association* (*N.S.W. Branch*), 1924 A.C. 764: "In their lordships' view," says Lord PARKER (*ib.*, at p. 778), "if any body rightly convened and properly composed is burdened with the discharge of some judicial or quasi-judicial duty, affecting the rights, liberties or properties of a subject, makes, as the result of a just and authorized form of procedure, a decision it has jurisdiction to give, that decision, if legal evidence be given in the course of the proceeding adequate to sustain it, cannot, in the absence of some fundamental error, be impeached or set aside, save upon the ground that this body was interested, or biased by corruption or otherwise, or influenced by malice in deciding as it did decide."

The rights and remedies of an expelled member, who has been expelled wrongfully, are to a large extent to be determined by the nature of the club in question; and for this purpose, a sharp distinction must be drawn between a members' club and a proprietary club. In an unincorporated members' club, the members have an interest in the property of the club. In a proprietary club, on the other hand, the property belongs to a few persons who run the club for the purpose of profit generally. Accordingly, in the former case, when an expulsion order has been wrongfully made, the member should bring an action against the committee and the trustees, for a declaration that the purported expulsion is void, and for an injunction restraining the committee, their servants, agents and other persons (if any) from excluding the member from the club and from depriving him of the privileges appertaining thereto. In the latter case, inasmuch as membership is entirely founded on contract and does not involve proprietary right, the action should be brought against the proprietors of the club, or against the club itself if it is an incorporated body like a company, for damages. There is, of course, in such a case, no right of reinstatement.

If one examines the case of *Wright* v. *The Bath Club Ltd.* (the club there being a proprietary club) it will be observed that damages may be awarded under two distinct grounds for wrongful expulsion. In the first place, the member will be entitled to some damages for the loss of the amenities of the club occasioned by the breach of contract on the part of the proprietors of the club in wrongfully expelling him; and secondly, damages may be awarded for loss of and injury to reputation caused thereby; though this head of damages would appear to savour more of tort than of contract. As regards the measure of damages under the first head, the damages are not to be measured by the amount of the subscription, because the amenities of the club might be considerably greater in value. On the other hand, mere nominal damages, may be awarded in a case when the conduct of the member had been such that continued membership of the club would be of no advantage to the member by reason of the fact that the member would be shunned by all the members of the club. This at any rate was the direction given by Mr. Justice HORRIDGE to the jury in *Wright* v. *The Bath Club Co., Ltd.*, but, it is submitted that there may be pecuniary advantages which the member might lose by his expulsion, e.g., cheap meals or cheap lodging, and in such a case it is submitted that a jury would be entitled to take such items into consideration in any event.

With regard to the second head of damages, viz.: loss of reputation, such damages might be substantial, inasmuch as the expulsion might prevent the expelled member from being elected to any other suitable club of a type similar to that from which he had been wrongfully expelled.

A Conveyancer's Diary.

A Mortgagee's Right to Sue for Deficiency after Sale by Order of the Court.

Another matter to which the attention of conveyancers may be drawn is the recent decision of the Judicial Committee of the Privy Council in *Gordon Grant & Co. Ltd.* v. *F. L. Boos*, which is briefly reported in 1926, W.N. 225.

This case raised the question whether a mortgagee who had, under an order of the Court, sold mortgaged property in default of payment, could sue under the personal covenant contained in the mortgage for any deficiency.

The following principles may be laid down:—

(1) A mortgagee who has obtained a foreclosure decree cannot enforce a personal covenant contained in the mortgage deed without thereby reopening the foreclosure: *Lockhart* v. *Hardy*, 1846, 9 Beav. 349.

(2) If a mortgagee after foreclosure parts with the mortgaged property, he thereby puts it out of his power

to have the foreclosure fully and fairly opened, and he is therefore precluded from suing upon the personal covenant to repay: *Perry* v. *Barker*, 1803, 8 Ves. 527; 1806, 13 Ves. 198; *Lockhart* v. *Hardy*, *supra*.

(3) A mortgagee who sells the mortgaged property under a power contained in the mortgage deed can sue under the personal covenant for any deficiency: *Rudge* v. *Richens*, 1873, L.R. 8 C.P. 358.

(4) In *Gordon's Case*, *supra*, the Judicial Committee held that where the sale of mortgaged property takes place under an order of the court, the mortgagor may be sued on his personal covenant for the difference between the mortgage debt and the proceeds of sale, and this notwithstanding the fact that the mortgagee had, after obtaining the leave of the court, purchased the property for a sum much smaller than that realized by a subsequent sale.

Appointment of S.L.A. Trustees by the Court where Portions of Estate subject to Rent-charge have been Sold.

In *Re Ogle's S. E.*, 1926, W. N. 227, a point of interest and importance to conveyancers was taken before Mr. Justice Romer. Briefly, the facts of the case were as follows: O was tenant for life of settled land under a settlement dated in 1862. In 1903 O exercised a power to charge the land from the date of his death with a jointure rent-charge in favour of his widow, and in 1912 he died, after having, in exercise of a further power, charged the land with the payment of portions to his two daughters.

O's eldest son, having then disentailed the estate and limited it to himself in fee simple, sold portions of it to purchasers subject to the jointure rent-charge. In each case he covenanted with the purchaser to indemnify him and the land conveyed against the rent-charge.

It will be observed that as the law stood on 31st December, 1925, the land was not settled land, but that by virtue of s. 1 (1) (v) of the S.L.A., 1925, it became on the 1st of January, 1926, settled land.

O's eldest son then applied to the court for the appointment of two persons as S.L.A. trustees under the settlement of 1862.

When the matter came before Romer, J., it was pointed out that it might happen that the trustees, when appointed by the court, might, by virtue of s. 31 of the S.L.A., 1925, become S.L.A. trustees, not only of the land still retained by the applicant, but also of the land sold by him prior to 1926, and after the matter had been duly argued the learned judge delivered a considered judgment. He pointed out that, although the settlement was brought about by one and the same document, namely, the settlement of 1862, in each case the person having the powers of a tenant for life was the person in whom the estate was vested: see S.L.A., 1925, s. 20 (1) (ix). It followed, therefore, that that part of the land which was vested in the applicant was the subject of one settlement and each part vested in a purchaser was the subject-matter of another settlement. Hence the proper method of procedure was to appoint trustees of the one settlement without those trustees thereby becoming trustees of any others, and the order applied for was amended accordingly.

The point raised, of course, cannot be described as one involving much difficulty, but it, like other decisions which have already been given on the new Acts, helps to clear the atmosphere by dispelling what are apparent rather than real troubles. (*To be continued.*)

Landlord and Tenant Notebook.

Extent of Covenant to Repair.— *Continued.*

These principles, in so far as they apply to a general covenant to repair, appear to have been approved by FLETCHER MOULTON, L.J., in *Rose* v. *Spicer*, 1911, 2 K.B., at p. 248, though the observations of the learned L.J. thereon appear to be only in the nature of *obiter*. Thus, the learned L.J. says, (1911, 2 K.B., at p. 248): "It is suggested that it was not proved that the railings and the walls on which they stand were erected at the date of the execution of the lease (and that therefore the liability to repair did not extend thereto). I entirely fail to appreciate the relevance of the remark. Whenever erected they became on erection part of the freehold to which they were annexed, and it is elementary law that a general covenant to repair and maintain such as we have here would apply to them. If a lessee whose lease contains such a covenant erects a house on the land leased to him he is just as much bound to maintain it and keep it in repair as if it had been built before the lease was granted."

Let us apply these principles to the facts in *Field* v. *Curnick* (*supra*). The decision of the learned judge, to the effect that the covenant to repair extended to all the six houses, is apparently to be based on the ground that all the houses in question were the subject of the demise, inasmuch as the parcels extended *inter alia* to all the messuages or tenements, and all other erections and buildings which might at any time thereafter during the term be built on the plot of ground in question or any part thereof, and that therefore all the six houses were included in the expression "the said premises" to which the repairing covenant referred. Stress was also laid by the learned judge on the fact, that "all the houses were erected simultaneously."

In conclusion it might be noted that the judgment of Mr. Justice SANKEY in the above case contains a very useful and complete survey of the law: "If a lessor," says the learned judge, *ib.*, at p. 511, "demises a house, and there is an express covenant to repair, the lessee is of course bound by it. If, on the other hand, the lessor demises a piece of land, and there is an express covenant by the lessee to repair any houses subsequently erected thereon, equally the lessee is bound by it. Further, a general covenant to repair includes not merely buildings existing when the demise is made, but all those which may be erected during the term; see *Cornish* v. *Cleife*, *supra*. If, however, the covenant to repair is only one to keep in repair the demised premises, it applies to those existing at the date of the lease only, unless the new buildings are made part of the old ones." May it not, therefore, also be argued that inasmuch as all the buildings were in one row and were not detached, the covenant to repair attached to all the houses by reason of the last-mentioned rule?

Effect of Surrender.

The effect of a surrender was considered by the Court of Appeal in an interesting case, where it was claimed that the surrenderor was relieved from liability for past breaches of covenants to repair by virtue of the surrender: *Richmond* v. *Savill*, 1926, W.N. 211.

The facts in that case were shortly, as follows: Premises were let for twenty-one years, from Michaelmas, 1922. The tenant died, and her executor was desirous of either sub-letting the premises or surrendering the lease. After some negotiation, the landlord's representative wrote to the executor a letter to the effect, that if the executor would agree to pay the rent up to the 25th March, 1925, and to give up possession not later than the end of February, 1925, the landlord would be "willing to release him." This offer was accepted orally by the executor, and possession of the premises was given up by him. Certain breaches of the repairing covenants, however, had occurred prior to the date of the surrender, and the landlord claimed damages. The defendant, the

executor, refused to admit the claim on the ground that they had been wiped out by the surrender.

The above surrender, it should be noted, was not an express surrender since an express surrender of a lease is required by statute to be by deed, except in cases where the lease in question does not exceed three years from the making thereof, and where the rent is not less than two-thirds of the improved value. The present statutory provisions are now to be found in the Law of Property Act, 1925, and there is one alteration to be noticed, i.e., the requirement that the rent should be "the best rent which can reasonably be obtained without taking a fine": s. 54 (2) L.P.A., 1925.

The material provisions in this connexion are: s. 52 of the L.P.A., 1925, which provides, *inter alia*: "(1) All conveyances of land and of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed; (2) This section does not apply to . . . (*c*) surrenders by operation of law, including surrenders which may by law be effected, without writing; (*d*) leases or tenancies or other assurances not required by law to be made in writing." Section 54, which provides, *inter alia*, that: "(2) Nothing in the foregoing provisions of this part of this Act (ss. 51, 52, 53) shall affect the creation by parol of leases taking effect in possession for a term not exceeding three years (whether or not the lessee is given power to extend the term) at the best rent which can be reasonably obtained without taking a fine." (*To be continued.*)

Reviews.

The Massachusetts Law Quarterly. May, 1926. Vol. XI. Issued by the Massachusetts Bar Association, Boston, Massachusetts. 70 pp.

The public agitation in regard to the administration of the criminal law in Massachusetts, which has been going on for some time, has recently culminated in a more or less official discussion of the subject before the Judiciary Committee at the State House. The May issue of "The Massachusetts Law Quarterly" contains a report of the substance of such discussion, and we can only say that the matter makes most interesting reading.

All You Need for the Bar Final. Graham Brooks. v and 129 pp. Sweet & Maxwell, Ltd., Chancery-lane.

It is a remarkable feat to have digested the main principles of the Law of Torts, Contract, Procedure, Evidence and the Principles of Equity into 129 pages. Condensed cram books are generally condemned, some deservedly so, but this little book is a happy exception, and as an aid to the memory prior to the examination it will be of invaluable assistance. The book is well arranged, and if read with one standard book on each subject, the chances of failure at the examination should be reduced to the very minimum.

The Railways Act, 1921. R. Prys Griffiths. Pitman and Sons, Ltd., Parker-street, Kingsway, London, W.C.

This little book contains a survey of the work of the Railway Rates Tribunal, and a clear exposition of the Railways Act, 1921. It is a mine of information on railway rates and charges, together with the changes contemplated by the Act of 1921. The appendices are very useful, especially the digest of judgments in the test cases determined by the Railway Rates Tribunal.

Constitutional Law and Legal History in a Nutshell. Marston Garsia, B.A. Second edition. v and 104 pp. Sweet and Maxwell, Ltd., Chancery-lane.

The second edition of this cram book will be welcomed by the bar student, for it contains a well-planned summary of the wide fields of Constitutional Law and Legal History. A special feature is the Comparative Table of the Constitutions of Canada, Australia and South Africa. When read with the standard text-books it should be a great help to the examinee.

The Law Relating to Carriage of Goods by Sea in a Nutshell. Marston Garsia, B.A. Second edition. iii and 36 pp. Sweet & Maxwell, Ltd., Chancery-lane.

This little "cockle-shell" is a very short epitome of the law relating to Bills of Lading and Charter-parties as amended by the Carriage of Goods by Sea Act, 1924. Doubtless it will be of great use to the Bar Final candidate.

Law Relating to Nuisances. By E. Holroyd Pearce, B.A., and The Hon. Dougall Meston. lx and 419 pp. London: Sweet and Maxwell, Ltd. 1926. 17s. 6d. net.

Like several other subjects in English Law, "nuisance" embraces a large variety of matters which have not many features in common but which are grouped together under one comprehensive heading because it is convenient to do so. The matters which, *inter alia*, are dealt with in this new work are the nature of Nuisance, interference with the enjoyment of proprietary rights, dangerous premises, waters, highways, animals, and public health and safety. The law is clearly stated, the authorities cited are up to date, and the book will, we think, be welcomed by practitioners as a standard work on the subjects with which it deals.

The Trustees Handbook. Second Edition. Large Crown 8vo, viii and 99 pp. (with index). 1926. Sweet & Maxwell, Ltd., Chancery-lane. 3s. 6d. net.

A new edition of this practical handbook was rendered necessary by the passing of the Trustee Act, 1925, and the Settled Land Act, 1925, both of which made many important changes in the law. Part I, dealing with the Powers, Duties and Liabilities of Trustees, is extracted from "Snell's Principles of Equity"; Part II, on the Powers of a Tenant for Life under the Settled Land Act, is an extract from "Williams on Real Property"; whilst Part III is a reprint of the relevant sections of the Trustee Act, 1925, and ord. 22, r. 17 (1) R.S.C., as amended, and relate to the Investment of Trust Funds.

The book is written in simple language, and certain technical terms are made clear to the non-legal mind, whilst there is a good index. On the whole quite a useful guide to any person called upon to discharge the responsible duties of a Trustee. We commend it accordingly. W.P.H.

Obituary.

Sir SAMUEL B. PROVIS, K.C.B.

Sir Samuel Butler Provis, K.C.B., died on the 12th inst. at his residence, Parkstone, Dorset, in his eighty-second year. He was the eldest son of Mr. Samuel Provis, of Bath, and was educated at London University and Queen's College, Cambridge. He was called to the Bar by the Middle Temple in 1866 and was appointed Junior Legal Assistant to the Local Government Board in 1872, ten years later being promoted an Assistant Secretary, whilst in 1899 he was appointed Permanent Secretary to the Board. He was made a C.B. in 1887, a K.C.B. in 1901, and a Companion of Honour in 1918. He was, without doubt, one of the most brilliant of the civil servants on the retired list.

Mr. J. T. JACKSON.

Mr. James Turner Jackson, solicitor, a member of the firm of Messrs. J. T. Jackson & Son, of 10, Church-lane, Oldham, died at Llandudno on the 30th ult. He was articled to the late Mr. W. R. Clark, and was admitted in 1881.

Mr. R. A. NEWILL.

Mr. Robert Augustus Newill, solicitor, a member of the firm of Messrs. Newill & Son, of 20, Church-street, Wellington (Salop), died recently at the age of sixty-four. Mr. Newill was educated at Charterhouse, admitted in 1886, and was a member of The Law Society. He held the appointments of Clerk to the County Justices of the Wellington Division, Clerk to the Old Age Pensions Committee and Clerk to the Commissioners of Taxes for the Division of Bradford, Wellington. W. P. H.

LAW OF PROPERTY ACTS.

POINTS IN PRACTICE.

Questions from Annual Subscribers are invited and will be answered by an eminent Conveyancer. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4. The name and address of the Subscriber must accompany all communications, which should be typewritten (or written) on one side of the paper only and be in triplicate. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post.

UNDIVIDED SHARES—PARTITION BY AGREEMENT—PROCEDURE.

395 *Q.* Freehold and leasehold property was purchased by A and B, who were partners, out of partnership moneys. A and B's shares in the partnership were equal. The property was conveyed or assigned to A and B in fee simple or for the residue of the several terms. In 1922 A and B agreed in writing to take the property out of their partnership assets and to hold them in equal shares. A died in 1924 and by his will appointed B and C his executors, and gave his residuary estate (including his half share in these properties) to them, upon trust for sale and division. On 31st December, 1925, the entirety in certain properties was in mortgage, but the separate half shares were unencumbered. It is now desired to partition the property between B and the residuary legatees under A's will. What deeds are necessary so as to vest the different properties in B and each of the residuary legatees as has been agreed ?

A. This case fell on 1st January, 1926, within the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (4), and therefore, subject to the terms taken by the mortgagees of the freeholds under Pt. VII and of the leaseholds under Pt. VIII, the property is vested in the Public Trustee upon trust for sale. To divest him, an appointment of new trustees must be made under Pt. IV, para. 1 (4) (iii), by B and someone else interested in the property, preferably one or more of the residuary legatees. When this is done, partition may be effected under s. 28 (3) of the L.P.A., 1925.

ACKNOWLEDGMENT FOR PRODUCTION OF DEEDS — COSTS OF AND INCIDENTAL TO.

396. *Q.* Under the provisions of s. 64 (5) of the L.P.A., 1925, the costs and expenses of or incidental to the production of deeds must be paid by the person requesting performance. The vendor to a client of ours has given the usual acknowledgment for production and safe custody, and has since sold the remainder of the property to which the deeds refer, and has parted with possession of them. If our client makes an enquiry from the solicitors who acted for the vendor to himself as to the whereabouts of the deeds in question, and, having received this information, requires the person in whose possession they are found to be to produce them, is he liable to pay the costs of: (1) the solicitors who act for the vendor to himself in connection with discovering the whereabouts of the deeds and giving the necessary information; (2) the solicitors who act for the person in whose possession the deeds are found to be for attending and producing them ?

A. The sub-section above mentioned reproduces s. 9 (5) of the Conveyancing Act, 1881, and s. 64 of the L. P.A., 1925, appears to be practically identical with s. 9 of the Conveyancing Act, 1881. The law therefore is not altered, nor presumably the practice. The answer to the questions asked is therefore that, as between the questioner's clients and their original vendor's solicitors, and also the solicitors who actually have possession of the deeds, their clients must pay, but s. 45 (4) (*a*) of the L.P.A., 1925 throws the expense of production as between their clients and their clients' purchasers (except as therein mentioned) on the latter. It appears to be the practice of some firms to supply information as to whom they have delivered the deeds gratis, but a fee would certainly be reasonable if the acknowledgment was dated many years ago, and they had to search in their archives.

FIVE PRE-1916 MORTGAGEES.

397. *Q.* A, B, C, D, and E are mortgagees under a mortgage created before 1st January 1926. The mortgage money was advanced by them out of moneys belonging to them on a joint account. The mortgagor desires to repay the mortgage debt. As there are more than four persons, has the property vested in the Public Trustee under Pt. IV of the 1st Sched. to the L. P. A., 1925 ? Otherwise, who are the proper persons to give the statutory receipt in discharge of the mortgage ?

A. By the L.P.A., 1925, 1st Sched., Pt. VII, the mortgagees take a term. By s. 36 (1) joint tenants hold a legal estate on trust for sale "in like manner" as tenants in common, but not so as to sever the joint tenancy in equity. Had the five mortgagees been tenants in common the situation would have resembled that stated in q. 350, p. 728, *ante*, the answer to which the questioner is referred. As to the applicability of the statutory trusts of Pt. IV, and s. 35, see answer to q. 154, p. 381. The advice is given here that the possibility of the mortgage having become vested in the Public Trustee under Pt. IV, para. 1 (4) cannot be disregarded, and that the mortgagees, or any three of them, should appoint trustees (any of themselves up to four, if they like) to divest him. Then the mortgagor, on payment off, should, under s. 115 (4), require a surrender of the term by the five mortgagees and the trustees (if different persons) on recitals, if thought fit, of the doubt, and the appointment of new trustees. The receipt could be acknowledged by the five mortgagees, and the term would be got in and determined, whether it had remained in the mortgagees or had vested in the Public Trustee on 1st January, 1926.

UNDIVIDED SHARES—DEVOLUTION—SALE—PROCEDURE.

398. *Q.* A testator died in 1867, after giving and bequeathing two leasehold houses and land to his son and daughter in equal shares as tenants in common. The son died in 1892, having by his will appointed two trustees. He gave and bequeathed his estate to such trustees, upon trust for sale and to pay the income of the proceeds to his wife for life (now deceased) and to stand possessed of the capital after her death in trust for his children. The daughter of the original testator died in 1915 intestate, leaving one son. The trustees of the original son renounced their executorship, but did not disclaim their trusteeship, though they have never acted therein. The leasehold property is still unsold, and the surviving children of the original son wish to dispose of their shares, but it would be difficult to show all the equitable titles. The trustees of the original son (one of such trustees being in Canada) are prepared to sell his share, but the successor of the daughter's share wishes to retain his share. We presume that the best method of procedure will be by deed of partition between the trustees of the original son and the successor of the original daughter, and then by way of sale by the trustees to the intending purchaser, but we shall be glad to have your opinion.

A. The land being held in undivided shares, Pt. IV of the 1st Sched. to the L.P.A., 1925 applied to it on 1st January, 1926. There was then a trust for sale of half, which would be vested in the trustees if they did not disclaim. If they disclaimed, the opinion is given that, on the analogy of *Mallot* v. *Wilson*, 1903, 2 Ch. 494, the testator's legal personal representative would have held on trust for sale. This being so, para. 1 (2) of Pt. IV appears to be excluded, even if the

original testator's son had left less than four children. Therefore para. 1 (4) applied, and the property vested in the Public Trustee under para 1 (4), but may be divested from him on appointment of new trustees under para. 1 (4) (iii) by the daughter's son (assuming her husband is not alive) and one or more of the son's children. If some wish to sell at once, but others wish to retain, a partition under s. 28 (3) may meet the circumstances, or the sale of part may be postponed under s. 25.

SETTLED LAND—TENANT FOR LIFE MORTGAGEE—PAYMENT OFF FROM CAPITAL—RELEASE OF SETTLED PROPERTY.

399. *Q.* M. B., the wife of R. B., died in 1923 intestate, possessed of freehold property subject to a mortgage to T. G., and leaving her husband and son her surviving. Shortly after her death administration was taken out of her estate by her husband, who was tenant by the curtesy of the freehold property, subject, however, to the mortgage. The husband then took a transfer of the mortgage from T. G. to himself into his own name. Shortly after this, trustees under the S.L. Acts, 1882-1890, were appointed by the court and certain portions of the property were sold, some of the purchase-money being applied in reduction of the mortgage and some paid over to the S.L.A. trustees. A vesting deed has now been executed and another portion of the property has been sold, the purchase-money of which is to be applied in final discharge of the mortgage. The conveyance to the purchaser recites that it is part of the agreement that the purchase-money shall, with the approbation and consent of the trustees, be paid to the tenant for life in payment off of his mortgage. Who will be the person whose name is to be set out in the receipt under s. 115 of the L.P.A., 1925, as the person who pays the mortgage money ?

A. The persons paying the mortgage money will, in effect, be the settlement trustees for the purposes of the S.L.A., 1925, and, since it is to be stated that the mortgage is paid out of capital money, s. 115 (2) (*b*) would apply. In any case, s-s. (2) (*a*) could be made to apply, with the consequence that the mortgage term would be determined under s-s. (1). But since the mortgage is to be paid out of purchase-money, the purchaser will no doubt require express surrender of the term by R. B. as beneficial owner.

COPYHOLD—SETTLED LAND—TRUSTEES.

400. *Q.* R. G. made a holograph will whereby he appointed his friend, T. W., executor, and gave and bequeathed unto his wife all his property, both movable and otherwise, for her use during her lifetime, and after her death "whatever remains to be equally divided among our children." The executor is dead, and we think it is quite clear that the case falls within the principle in *Re John Dixon deceased, Dixon* v. *Dixon*, 1912, Sol. J., p. 445, and the widow only took a life estate. She still has the property, a customary (now freehold—subject to manorial incidents) dwelling-house, and she wants to appoint new trustees to act after her death. This property being customary never was vested in the executor. Can she appoint the new trustees or must she go to the court ?

A. The questioners will find further authorities on the construction of a will such as the above cited in the answer to *Q.* 264, p. 580, *ante*, but they have the entire will before them, and their interpretation of it will, of course, be assumed as correct. The trustees for the purposes of the S.L.A., 1925, will be R. G.'s personal representatives (if any) under s. 30 (3), notwithstanding that the copyholds never vested in them. If T. W. died intestate, or otherwise there is no personal representative of R. G., the alternatives will be application for a grant *de bonis non* to his estate, or to the court to appoint trustees under the 2nd Sched., para. 1 (3), unless the remaindermen are all *sui juris* and an appointment can be made under s. 30 (1) (v), or unless the trustees of the will have powers under it so that they fall within any of the other classes of S.L.A., 1925, trustees defined in s. 30 (1).

BONUS SHARES.

401. *Q.* Part of a trust fund, under wide powers of investment of a marriage settlement, is invested in the ordinary shares of a manufacturing company paying large dividends and with accumulated assets and reserves. The company resolve to distribute amongst its shareholders bonus shares, and in due course grant to the trustees a certain number of shares *pro rata* to their holding. Can the present beneficiary, entitled to the interest of the trust funds for life, *qua* tenant for life, claim the bonus shares, on the principle that they represent undistributed and accumulated income ?

A. Prima facie the answer to this question is in the negative, under the doctrine of *Bouch* v. *Sproule*, 1887, 12 A.C. 385, but no one could give a safe opinion without sight of the settlement as a whole, and of the resolutions and memorandum and articles of association of the company, considered in the light of a long chain of authorities from *Bouch* v. *Sproule* to *Re Speir*, 1924, 1 Ch. 359, and perhaps more recent ones; and see also T.A., 1925, s. 10 (4) (which, however, must be read subject to s. 69 (2)). Has the questioner been carefully through the settlement to see whether it contains the usual clause dealing with this situation ? A well-drawn modern one should do so.

REGISTRATION UNDER THE L.C.A., 1925.—COSTS.

402. *Q.* With reference to the registration of land charges under the L.C.A., 1925, the law and practice as to the various matters which require registration are quite clear, but I am not able to find any definite authority on the two following points: (1) Whether it is the covenantee or the covenantor who must pay for the registration ? (2) Is the solicitor who effects registration on behalf of the party responsible entitled to make a charge for the extra work involved, say one guinea, on the analogy of the charge, which used to be made with the old I.V.D. P.D. particulars, and, if so, is it safe to assume that these costs will be payable by the person responsible for paying the expense of the registration, as mentioned in (1) above ?

A. (1) Payment is at the expense of the person who registers, *i.e.*, the covenantee as taking the benefit of the charge. The covenantor has no duty to register.

(2) The solicitor no doubt would be allowed his proper charge for attendance at the registry, and under the new Act there will presumably be a preliminary attendance under s. 4. In registering the I.V.D. particulars some agreement as to figures had to be made with the authorities, but the attendances under the L.C.A., 1925, are ministerial only, so it is thought would hardly carry the £1 1s. or £1 8s. But as to the practice generally, an experienced London solicitor's clerk might perhaps speak with authority equal to or greater than that of a conveyancer.

JOINT TENANTS FOR LIFE—SALE.

403. *Q.* A testator who died in 1903 gave, devised and bequeathed certain freehold property to A and B, to hold the same unto the said A and B in equal shares and proportions for and during their lives as joint tenants and declared they should have no power to mortgage or charge their interest in the property or anticipate it in any way, his intention being that it should be some provision for them when they want it. And from and after the decease of the survivor of them he gave, devised and bequeathed the said property in equal shares between their children or remoter issue, such remoter issue only to take what would have been their parent's share if there was a division of the property. And in the event of the said A and B dying without leaving lawful issue, then he gave, devised and bequeathed the said property to the heir-at-law of the survivor. The testator appointed two trustees and executors of his will, to whom he gave, devised and bequeathed all the residue of his property, to hold upon certain trusts, and he gave them all powers necessary to deal with his estate as they think most advisable for all concerned

and a power of sale of any portion of the property. The original trustees are dead and two new trustees were appointed in 1924 to hold the residuary estate of the testator. A and B are still alive, but have no issue and are now considering a sale of their property. The following points have arisen :—

(1) Can they sell ?

(2) Is a vesting deed required to enable them to sell ?

(3) Who are the proper persons to convey, as in the appointment of new trustees in 1924 no reference was made to the property of A and B.

(4) In the event of their dying without issue before the property is sold, who would convey the property to the heir-at-law of the survivor who presumably would be ascertained according to the old rules ?

A and B have been in possession of the property since the testator's death, and their nearest relation is a brother who has children.

A. (1) Yes, as tenant for life under the S.L.A., 1925, ss. 19 (2) and 38.

(2) Yes, under the 2nd Sched., para. 1 (2), and s. 13.

(3) They are the proper persons to convey under s. 72 (1).

(4) The trustees of the settlement created by the devise for the purposes of the S.L.A., 1925, as special representatives of the survivor of A and B under s. 22 (1) of the A.E.A., 1925, if dying testate or s. 162 of the J.A., 1925, if dying intestate. If the new trustees of the will have a power to sell land subject to that settlement they are trustees of it for the purposes of the S.L.A., 1925 : see s. 30 (1) (i) and (iii) ; otherwise the personal representatives (if any) of the original testator are trustees under s. 30 (3). It is agreed that the heir-at-law must be found by reference to the old rules.

UNDIVIDED SHARES—EXECUTOR'S POWER TO APPROPRIATE PROPERTY TO.

404. *Q.* A testator who died in November, 1924, devised four dwelling-houses to his four children (two sons and two daughters) in equal shares, as tenants in common, and appointed one of the sons his executor and trustee. Probate was granted to such executor in July, 1925, and the rents of the houses divided between the four children up to Christmas 1925, but no written assent has been given. In consideration of certain advances made by the sisters to their brothers, which have been agreed at a certain sum, the latter are desirous of releasing their interest in the property to them. As there has been no assent, cannot the personal representative convey two of the houses to one sister, and the remaining two to the other sister—the other devisees joining to release their shares or interests ?

A. Personal representatives now have a statutory power of appropriation conferred on them by s. 41 of the A.E.A., 1925, exerciseable whether their testator died before or after the Act, see s-s. (9). They may, therefore, if they follow the directions in the section (see especially s-s. (3)) appropriate a house to each beneficiary or otherwise, and then under s. 36 convey to the daughters, the sons' shares being so conveyed by their direction. In respect of the sons' interests so conveyed, however, probably *ad valorem* stamp duty would be attracted. If all the beneficiaries agree, the transaction may be carried out without recourse to s. 41.

SETTLED LAND—NO VESTING DEED—DEATH OF TENANT FOR LIFE—INFANT REVERSIONER.

405. *Q.* A, who died in 1892, devised Blackacre to B for life with remainder to C for life, with remainder to C's issue in tail, and appointed B and C executors and trustees, and directed them or other the trustees of his will to sell the rest of his real estate. C (the survivor) died in 1926, leaving D his sole executor. No appointment of new or additional trustees was made, nor was a vesting deed executed. E, who succeeded to the entail on C's death, is an infant. D had proved C's will, and now proposes to appoint F to act with him as the trustees of A's will, and to sell Blackacre. Should a vesting assent be made by D as executor to the vesting of Blackacre in D and F on the trusts of A's will ? Or should a vesting deed under S.L.A. be executed ? Should the conveyance to the purchaser be made by D and F in exercise of the power vested in them by S.L.A. ? Blackacre was copyhold, and, on B's death, C was admitted on the court rolls as tenant for life. Should the agreement for extinguishment of manorial incidents be made by D and F ?

A. (i) This problem is somewhat similar to that contained in *Q.* 306, p. 645, *ante*, to which the questioners are referred. There, however, one difficulty raised in *Q.* 306 is absent, for D is A's personal representative. As such he is trustee of the settlement for the purposes of the S.L.A., 1925, under s. 30 (3), with the obligation of appointing a co-trustee. Since, however, he was the only trustee on C's death, he alone would be the special representative under s. 22 (1) of the A.E.A., 1925. After paying or providing for death duties, he should execute a principal vesting deed or assent under ss. 7 (1) and 8 (4) (*a*) or (*b*) of the S.L.A., 1925, in favour of himself and F (if and when appointed under s. 30 (3) to act with him) as statutory owners. D and F will sell as such by virtue of their powers under the Act.

COPYHOLDER—INFANT OWNER—AGREEMENT FOR EXTINGUISHMENT OF MANORIAL INCIDENTS.

(ii) In respect of the last part of the question, it is suggested that the property might sell better if the purchaser were left free to make his own agreement with the lord. But if it is deemed necessary to make an agreement for extinguishment before sale, it must be made between the lord and tenant under s. 138 (1) (*a*) of the L.P.A., 1922, and the tenant is defined in s. 143 (1). This refers to the person in whom the legal estate vests under Pt. V of the Act, which in turn refers to the 12th Sched. Every answer involving construction of this Schedule must be given subject to the doubt discussed in the answer to *Q.* 196, *ante*, but, if sub-para. (ii) of para. (8) applies, which seems the most likely construction, D and F will have power to enter into the agreement, since they are statutory owners. The questioners are thanked for their appreciative reference to these columns in their covering letter.

SETTLED LAND—NO VESTING DEED—DEATH OF TENANT FOR LIFE.

406. *Q.* A, by her will dated 1900, devised two freehold dwelling-houses to her daughter B, and at her death one each of such houses to her daughters C and D. E and F were appointed executors of the will, but not trustees. C and D were A's daughters by her first marriage and B her daughter by her second marriage. A died in 1900, and her will was proved by E and F in 1900. In 1910 E and F assented to the devise of the properties to C and D, one house to each as they agreed (the will not stating which house C and D should have), subject to the life interest therein of B. B, the life tenant, died on 4th January, 1926, intestate, a spinster. C died in 1921 intestate, without issue. No vesting deed was ever executed by E and F formally vesting the legal estate in the properties in B, the life tenant, which presumably on 1st January, 1926, *did* vest in B, the life tenant, notwithstanding the assent in 1910 by which C and D obtained the legal estate from the executors. D, in 1926, obtains a general grant to the estate of her deceased sister C, as sole heiress at law, so that apart from the new legislation D would be absolute owner of both properties, the one by the assent to her, the other by the grant to the estate of her deceased sister C. B, the life tenant, had no estate to which administration could be granted other than her life estate. No vesting deed having been executed, no deed of discharge can be executed, though the settlement is now at an end. Is it now necessary in order for D to show a clear title to the properties to obtain a grant to the estate of B, since the legal estate in the properties presumably vested in B on 1st January, 1926 ? If this step

is not necessary, can it be said that the assent in 1910 was in any way avoided by the new legislation and that the legal estate in the properties which passed to C and D on the assent being made, passed by virtue of the new legislation from them on 1st January, 1926, to B? Both the executors of the will are still alive, and the settlement being at an end D is the only person entitled to the properties. What remains to be done to put the title in order? Is it submitted that, though a grant to the estate of B is necessary, that D should take it, and not the executors who divested themselves of their estate in 1910 by assenting?

A. It would have been a breach of trust for the executors of A to assent to the reversionary gift unless they were also prepared to assent to that of the life interest in the property, and they must be taken to have done so. Accordingly, by virtue of the L.P.A., 1925, 1st Sched., paras. 3 and 6 (*c*), the property vested in B on 1st January, 1926, and E and F were trustees for the purposes of the S.L.A., 1925 (assuming none can be found under s. 30 (1)) under s. 30 (3) as personal representatives of A, the fact that they had divested themselves of their estate being immaterial. On B's death they would be her proper legal personal representatives *qua* the property in question under the Judicature Act, 1925, s. 162 (1) (*b*) if willing to act. If unwilling a grant might be made to D, but she would probably be required to take a full grant unless B has left an own brother or sister. See Non-Contentious Probate Rules, p. 349, *ante*, and Directions, p. 286. In either case the special administrators or administrator would have to pay or provide for the death duties and give their assent to the devolution of the property according to the will. The circumstances show that D was beneficially entitled to both houses, and therefore s. 7 (5) of the S.L.A., 1925, applies, and the administrator or administrators should convey to D or assent under s. 8 (1), and the A.E.A., 1925, s. 36 (1). As to the absence of a deed of discharge, see last eight lines of *Q.* 252, p. 560, *ante*.

Correspondence.

Transfers of Stocks by Trustees.

Sir,—We should be glad if you would allow us to draw attention to what appears to us to be a very important point affecting executors and trustees in the administration of estates.

In the ordinary course of administering a small estate recently, we sold some shares through a firm of brokers—the sale price being £50. In due course the transfer came to hand for execution, showing an increased sale price—the increase above the £50 of course, representing profit on a sub-sale.

We objected strongly to the executors being called upon to execute that transfer, inasmuch as it showed a purchase price which they had not received, and would never receive; and because we objected, we were threatened with the purchaser's right to buy in, being exercised against us.

We need not trouble you with the way we have got out of this and an identical difficulty in a former case, but we should be glad if the point at issue might be ventilated in your columns.

It seems to us that it is a grave dereliction of duty on the part of trustees or executors to execute transfers of stock showing, as the consideration, the sub-purchase price (which they do not receive) only. We should like to know what is the practice adopted by the profession in such cases.

The practice of the Stock Exchange, in framing the transfer as from original seller to ultimate buyer, with the *last* price paid shown as the consideration, may be so established as to have become sacrosanct; but it seems to us that the proper course is for executors or trustees, in such cases, to insist that there shall be a transfer to the actual purchaser from them, with the actual purchase price inserted which the executors or trustees will receive—the sub-sale being made the subject of another and independent instrument of transfer.

Doubtless the object of the practice is to escape stamp duty on successive sales of the same securities, but the fiduciary position of executors or trustees seems to us to call for a resolute refusal on their part to follow the practice, however sacred it may have become by long usage.

Hove, B. Bunker & Son.
20th July.

The Stamp on an Endorsed Receipt.

Sir,—Is a document which provides for payment only on the signature of an endorsed receipt a cheque at all?

17th July. G. A. King.

[An order on a bank to pay, "provided the receipt form at the foot thereof is duly signed, stamped and dated," is not an unconditional order to pay, and is therefore not a cheque: *Bavins* v. *London & South Western Bank*, 1900, 1 Q.B. 270. An instrument providing for payment to a payee and crossed payable only upon signature by the payee of a form of receipt at the foot of the instrument is not a bill of exchange within the Bills of Exchange Act, 1882: *Capital & Counties Bank* v. *Gordon*; *London City & Midland Bank* v. *Gordon*, 1903, A. C. 241, 252. Section 82 of the Bills of Exchange Act, 1882 (which deals with crossed cheques), does not protect bankers paying orders made in the form of cheques, but which are really orders to pay conditionally on a receipt on the cheque being signed by the payee: *Underwood Ltd.* v. *Bank of Liverpool and Martins*, 1924, 1 K.B. 775.

But, of course, if the signing of the receipt does not make the order to pay contained in the document conditional, e.g., if the words used are "the receipt at the back hereof must be signed, which signature will be taken as an indorsement of the cheque," then the document if otherwise appropriate is negotiable as a bill of exchange or a cheque: *Nathan* v. *Ogdens*, 93 L.T. 555; 94 L.T. 126.

A. T. Lawrence, J., pointed out in that case (93 L.T. 555) that, in his opinion, the cheque was a negotiable instrument notwithstanding the words above quoted at the foot thereof. "The order to pay," he said, "is unconditional, and though the words at the foot of the cheque are imperative in terms, they are not addressed to the bankers and do not affect the nature of the order to them."

The fact, however, that a document which is in the form of a cheque, but which, being a conditional order to pay money, is not really a cheque or a bill of exchange at all for the purposes of the Bills of Exchange Act, 1882, is, we think, besides the point for our purposes when considering whether a stamp is required in the case of a receipt indorsed thereon. The expressions "cheque" and "bill of exchange" have a much wider meaning when used in the Stamp Act, 1891 (see s. 32, *ib.*), than they have for the purposes of the Bills of Exchange Act, 1882. "An order for the payment of any sum of money . . . upon any condition which may or may not be performed or happen" is expressly declared to be a bill of exchange for the purposes of the Stamp Act, *ib.*—Ed., *Sol. J.*]

NURSING HOME ABUSES.

In view of the wide public interest aroused by the disclosures made in the report of the Select Committee on Nursing Homes as to the abuses prevailing in certain of these institutions, it will be of interest to give the names of the authors of the report, all of whom were, of course, members of the House of Commons. The Committee, appointed by the Government on 2nd March last, was composed as follows: Sir Cyril Cobb (chairman), Dr. Vernon Davies, Captain Ernest Evans, Mr. Haslam, Mr. G. B. Hurst, General Sir R. Luce, Mrs. Hilton Philipson, Major Price, Dr. Shiels, Miss Wilkinson and Mr. Cecil Wilson.

Court of Appeal.

No. 1.

In re **Lang Propeller Limited.** 6th July.

COMPANY—MORTGAGE—INCOME TAX DEDUCTED FROM INTEREST BUT NOT PAID TO REVENUE—LIQUIDATION OF COMPANY—CROWN CLAIMING AS PREFERENTIAL CREDITOR—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), all schedules, rr. No. 21 (1) (2)—COMPANIES (CONSOLIDATION) ACT, 1908 (8 Edw. 7, c. 69), s. 209.

A company deducted income tax from the amounts paid as interest on its mortgage debt, but did not pay over the sums so deducted to the revenue authorities. Upon a voluntary winding up of the company:

Held, that the Crown was not a preferential creditor in the liquidation; the sums in question not being debts due to the Crown in priority within the scope of s. 209 of the Companies (Consolidation) Act, 1908.

Appeal from a decision of Eve, J., 70 SOL. J., p. 651. The Lang Propeller Limited was registered in October, 1913, and in December, 1920, it mortgaged its freehold works at Weybridge, and other assets to secure an advance of £30,000, with interest at the rate of £8 per cent. per annum, payable quarterly. The Company made no profits, but it paid interest on the mortgage for the years 1921-22, 1922-23, and for part of the year 1923-24. When paying the interest to the mortgagee the company, pursuant to s-s. (1) of r. 21 of the General Rules for all Schedules (Income Tax Act, 1918), deducted thereon a sum representing the amount of the tax thereon under Sched. D at the rate of tax in force at the time of the payment. Thus from the £2,400 payable in the year 1921-22, when the rate of tax was six shillings in the pound, the company deducted £720; in 1922-23, when the rate was five shillings, £610 6s. 1d.; and in 1923-24, when only one quarter's interest was paid, £131 0s. 6d. By s-s. (2) of the same rule the company, on making each deduction, ought forthwith to have accounted to the Commissioners of Inland Revenue for the amount so deducted, and every such amount became, as soon as the deduction was made, a debt from the company to the Crown, and was recoverable as such. The company, however, failed to pay the amounts deducted to the revenue, and, in November, 1923, passed a resolution for a voluntary winding up. The Crown claimed to be paid, in priority to all other creditors, and based the claim upon s. 209 of the Companies (Consolidation) Act 1908, which provides that in a winding up there shall be paid in priority to all other debts, *inter alia*, all assessed taxes, land tax, property or income tax assessed on the company up to 5th April next before the date of the commencement of the winding up, and not exceeding in the whole one year's assessment. Eve, J., held that the amounts in question were not a tax assessed on the company; that on the contrary, they were the income tax under Sched. D on the mortgagee; that the mortgagor was only the agent of the Crown for collecting the tax payable by the mortgagee; and that there was nothing in s. 209 which gave any priority to a debt of the present kind. The Crown appealed. The court dismissed the appeal.

Lord HANWORTH, M.R., said that he quite agreed with the reasoning of Eve. J., and he was satisfied that the responsibility for the collection and payment over of this income tax could not be put so high as to bring this debt within s. 209. The appeal must be dismissed.

SCRUTTON, L.J. and ROMER, J., agreed.

COUNSEL: *R. P. Hills* (*The Attorney-General, Sir Douglas Hogg*, K.C., with him) for the Crown; *C. E. E. Jenkins*, K.C. and *Bischoff*, for the liquidator.

SOLICITORS: *Solicitor of Inland Revenue; Julius Edwards and Julius.*

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Frampton *v.* **Gillison and Sterling and Company Ltd.**

Lawrence, J. 29th June.

VENDOR — PURCHASER — RESTRICTIVE COVENANTS — RESTRAINT OF TRADE—"TRADING TO BE RESTRICTED TO CHEMIST AND DRUGGISTS' BUSINESS AND DENTIST OR DOCTOR"—POST OFFICE—BREACH OF COVENANT.

The opening of a post office in a druggists' shop is not a breach of a covenant by the purchaser of the shop, that trading was to be restricted to chemistry and druggists' business and dentist or doctor, because the carrying on of a post office is not such a trading as is contemplated by the context of the covenant.

This was a motion which had stood over from 26th February to enable the company to be joined as a defendant asking for an injunction restraining the defendants from conducting or managing a post office upon the premises, No. 10 Bromley Hill, which had been sold to the defendant Gillison. It was agreed to treat the motion as the trial of the action. The facts were as follows: By an agreement in writing dated 13th August 1925, the plaintiff agreed to sell to the defendant Gillison, a medical practitioner, for the sum of £3,150, certain freehold property, being part of the Bromley Hill Estate, Kent, known as No. 10 Bromley Hill. The date fixed for completion was 1st September, 1925. The agreement contained these words: "Trading to be restricted to chemistry and druggists' business and dentist or doctor." The defendant purchased the property with a view to a company being formed for the purpose of acquiring the same, and the company was so formed on 26th November, and incorporated under the name of "Sterling and Company Limited," and the defendant became one of the directors. The plaintiff's evidence showed that the premises formed part of a row of shops which he was in the course of building and disposing of, and to prevent two or more businesses of the same kind from being carried on in competition, his scheme was to require any purchaser from him to enter into a covenant restricting trading upon the premises to certain trades or businesses therein specified. In November, 1925, Gillison, in spite of the plaintiff refusing his permission, procured from the Postmaster-General the appointment of a sub-postmaster of an office to be opened on the said premises, and accordingly, in December, he opened an office and proceeded to conduct thereon, in addition to the business of a chemist, carried on by the company, the usual routine work of a local post office with the result that the plaintiff issued the writ in this action, and claimed a declaration that the conduct of a post office, constituted a breach of the covenant, and other consequential relief. In March the premises were conveyed by the plaintiff to the company by a deed which incorporated the covenant. The remuneration of a sub-postmaster, is determined by the amount of business done and by a fluctuating cost of living bonus.

LAWRENCE, J., after stating the facts said: The term "trade" is an elastic one, a definition of which I will not attempt to give. Its meaning, whether wide or restricted, depends upon the context of the writing in which the term is used. Here the term has been used in no narrow sense, as it includes the business or profession of a doctor. Assuming the term as used here was used in that wider sense, the question then is whether it includes the conduct or management of a post office. Counsel for the plaintiff has argued that the position of a postmaster is akin to that of a carrier and of any trader who buys and sells, since the conduct of a post office involves the buying and selling of envelopes and postcards, etc., and the transmission of letters and parcels for money payment, varying according to weight and bulk. If the position of the Postmaster-General can be divorced from the business carried on, a breach of the covenant has been committed. But the so-called trading is in fact a branch

of the public service, and is outside the ambit of the restriction. The Postmaster-General has a monopoly of the sale of stamps and delivery of letters, etc., and of carrying on the business that is ordinarily carried on by the post office, a business therefore, which cannot be said to compete with the trade of any private individual. The surrounding circumstances show the object which the plaintiff had in view when he imposed the restrictions, which was to preserve for himself the power of more advantageously disposing of his other shops by securing to a purchaser freedom from competition. On these grounds the conduct of the work of a post office upon the premises by the defendants does not constitute a breach of the covenant and the motion will accordingly be dismissed.

COUNSEL: *Jenkins*, K.C., and *Gilbert Beyfus*; *F. R. Evershed*.

SOLICITORS: *James and Charles Dodd*; *W. R. Millar and Sons*.

[Reported by L. MORGAN MAY, Esq., Barrister-at-Law.]

High Court—King's Bench Division

Commissioners of Inland Revenue *v.* **The Society for the Relief of Widows and Orphans of Medical Men.**

Same *v.* **The Medical Charitable Society for the West Riding of Yorkshire.** Rowlatt, J.

REVENUE—INCOME TAX—SOCIETIES—RELIEF TO MEMBERS—TO WIDOWS AND ORPHANS OF MEMBERS—WHETHER CHARITABLE PURPOSES—EXEMPTION FROM INCOME TAX—INCOME TAX ACT, 1918, Geo. V, c. 40, s. 37 (1) (*b*).

Section 37 (1) (*b*) *of the Income Tax Act*, 1918, *enacts that*: "*Exemption shall be granted from tax under Schedule C, in respect of any interest, annuities, dividends, or shares of annuities, and from tax under Schedule D, in respect of any yearly interest or other annual payment forming part of the income of any body of persons or trust established for charitable purposes only, or which, according to the rules or regulations established by Act of Parliament, charter, decree, deed of trust, or will, are applicable to charitable purposes only, and so far as the same are applied to charitable purposes only.*"

Relief given by a society out of its funds, provided by members and non-members, to indigent members or to the indigent widows and orphans of its members, according to the rules established by its charter, is applied to charitable purposes only, and the income from the funds is exempted from liability to tax.

Cases stated by the Special Commissioners. The questions raised by the two cases were almost identical, and one judgment was delivered in both. The Society for the Relief of Widows and Orphans of Medical Men, hereinafter called the society, made a claim for exemption from income-tax to the Commissioners of Inland Revenue in accordance with the provisions of s. 19 (1) of the Finance Act, 1925. The Commissioners of Inland Revenue refused this claim, and the society thereupon applied to have the claim determined by the Special Commissioners under s. 19 (2). The society claimed that its income was, according to the rules and regulations established by its charter, applicable and applied to charitable purposes only. The society was formed in 1788, and incorporated by Royal Charter, dated 5th April, 1864. The charter contained, *inter alia*, the following recitals and provisions: That the said society was formed in the year 1788 by Dr. Thomas Denman and other eminent members of the medical profession, with the object of establishing a brotherhood for relieving those widows and orphans of its deceased members who might need assistance, and that it unites the advantages of a provident with those of a benevolent society, that it is provident, inasmuch as by a small yearly subscription the members are enabled to protect their widows and orphans from destitution should they need relief, and it is benevolent, inasmuch as its benefits are conferred only on those who are left in straitened circumstances. . . . Its funds have been augmented from time to time by legacies, donations, and contributions from its members and other benevolent persons, who have been desirous of relieving the distress to which, as is well known, the families of medical men are peculiarly liable by the death of the husband or father. Clause 2: That the purposes of the society hereby incorporated shall be to grant relief to the distressed widows and orphans of the deceased members thereof, and to raise the necessary funds by the interest of moneys invested, the subscriptions of the members of the society, the legacies and donations of such persons as may make contributions in furtherance of the purposes of the society, and for other purposes. Clause 21: That the society shall . . . make such by-laws, rules, and regulations respecting . . . the amount of grant or other payment or provision to be from time to time paid, allowed, or given to any widow or orphan of any member, and the time during which any grant or other provisions shall be paid or allowed or continued to be paid or allowed, the conditions or circumstances under which the widow or orphan or any member shall or may be deemed eligible to obtain or receive or continue to obtain and receive the benefit of any grant or other provision.

The case set out a number of by-laws providing for the annual subscriptions or composition fees in lieu thereof to be paid by members, according to their age at the time of joining; for the suspension of payments in case of sickness; and for the making of applications for relief by widows and orphans of members; for the investigation of such applications; and the payment of grants, in approved cases, having regard in the case of a widow to the age of the applicant and her ability to maintain herself wholly or partially and to the amount of the subscriptions paid by her deceased husband. There was a special fund, consisting of the income of a legacy of £5,000, bequeathed by the late Thomas Copeland, a member of the society, set aside for granting extraordinary relief in special circumstances of unusual distress; but any balance remaining half-yearly became applicable to the general purposes of the society. The annual grants made at the material time to widows varied from £75 to £95, and to orphans from £60 to £70. The average income of the widows, excluding the grants from the society, was £31. The income from annual and life subscriptions was therefore barely sufficient to meet the expenses of administration, and the society was not kept solvent by the subscriptions received from members, nor were its affairs conducted on actuarial lines. In practice no regard was had to the amount of subscriptions paid by a deceased member in determining the grant to be made to his widow. A very large proportion of the members of the society were in such circumstances that their dependants would not in the ordinary course require relief from the society.

It was contended on behalf of the society (1) that in construing the phrase "charitable purposes" in s. 37 of the Income Tax Act, 1918, regard must be had to the decisions in the Chancery Division of the High Court; (2) that in accordance with those decisions a fund for the benefit of the dependants of subscribers was charitable if by the rules of the funds the benefits were confined to dependants who were poor and were not claimable by any dependant irrespective of his or her means; (3) and accordingly the income of the society was by its rules applicable to charitable purposes only, and was applied to such purposes; and (4) that the claim to exemption from income-tax should be allowed.

It was contended on behalf of the Commissioners of Inland Revenue (1) that the constitution of the society showed that it was both a provident and a benevolent institution; (2) that the society was therefore not established for charitable purposes only, and its income was not

by its rules applicable or applied to such purposes only; and (3) that the claim for exemption from income-tax should be refused.

The Special Commissioners were of opinion that in interpreting the phrase "charitable purposes" they were bound to have regard to the decisions of the Chancery Division of the High Court. In view of those decisions, they held that the income of the society was by its rules applicable to charitable purposes only, and was applied to such purposes. They accordingly allowed the society's claim for exemption from income tax.

THE SECOND CASE.

In the second case the society was established in 1828, the objects for which it was established being to help, (*a*) any member who is disabled by illness or accident or age, and who has not adequate means of support; (*b*) the widow or children of a member dying in indigent circumstances; (*c*) the mother of such member, being a widow (or the sister, being single or a widow) who acted as his housekeeper for a period of not less than five years immediately preceding his incapacity or death; (*d*) in the education of the children of members thus disabled. By-laws provided, as in the other case, for the making and investigation of applications for grants; the amount and application of subscriptions; and the conditions and the amounts of the grants which might be made. The two principal differences between this and the first case were (*a*) that in this case members themselves might become eligible for relief, while in the first case grants were limited to dependants of deceased members; (*b*) that in this case a considerable number of subscriptions and donations were received by the society from persons who were not members, and who were not necessarily connected with the medical profession.

ROWLATT, J.: The question to be decided was whether, according to the charters and trust deeds, the income of those trusts was applicable to charitable purposes only. He had not to consider the source which supplied the income, but the purposes for which the income was held. That enabled him to avoid deciding the cases with reference to the amount of the outside help. The funds were solely devoted to the relief of indigence, which was a charitable purpose within the decisions of the Court of Chancery. The rules were particular to see that that purpose was observed: the means of the widows and their power to help themselves were scrutinized. When it was said that the relief of poverty was within the rule as to charities, it meant relief given by way of bounty, and not as the result of a business arrangement. The question was whether these were cases of that kind. It was true that doctors were invited to qualify for contingent relief by those societies. But what were they really getting? They obtained the advantage of their own subscriptions and of the subscriptions of those who were not indigent and of all the donations. They did not get a right to anything. The funds were in the hands of trustees, who were, of course, bound to discharge faithfully the duty of granting relief. Did that amount to a business bargain between the members, or was it a means of qualifying for the receipt of what was really charity? He thought that the cases were bound by the authority of *Spiller* v. *Maude*, (1886), 32 Ch. D. 158*n*. The constitution of the societies mentioned in that case seemed to him to be substantially on all fours with the present cases. In those societies the element of the relief of poverty was outside the contractual relief of poverty, and it was held that they were charitable. A strong contrast existed between *Spiller* v. *Maude*, *supra*, and *Cunnack* v. *Edwards*, 1896, 2 Ch. 697, and *Re Clark*, 1875, 1 Ch. D. 497, which were cases where there was simply a contract. With regard to the corporations profit tax cases, none of the cases referred to above were cited in *The Linen and Woollen Drapers* v. *Commissioners of Inland Revenue*, 58 L.T. 949, and that decision could not be regarded as binding in the present cases. The appeals must be dismissed.

COUNSEL: for the Crown, *The Attorney-General* (Sir Douglas Hogg, K.C.) and *R. P. Hills*; for the society in the first case, *Latter*, K.C., and *Andrewes-Uthwatt*; in the second case, *Sir Edgar Stanford London*.

SOLICITORS: *Solicitor of Inland Revenue*; *Le Brasseur and Oakley*; *Burch & Co.*, for *Dibb, Lupton & Co.*, Leeds.

[Reported by COLIN CLAYTON, Esq., Barrister-at-Law.]

London Steamship & Trading Corporation Ltd. *v.* **Russian Volunteer Fleet.** Salter and Fraser, JJ. 11th June.

PRACTICE—ACTION TRIED BEFORE OFFICIAL REFEREE—DEFENDANTS ABSENT—JUDGMENT FOR PLAINTIFFS—APPLICATION BY DEFENDANTS TO HAVE JUDGMENT SET ASIDE—APPLICATION NOT MADE WITHIN PRESCRIBED TIME—MATTER REFERRED BACK TO OFFICIAL REFEREE TO CONSIDER APPLICATION—JURISDICTION OF OFFICIAL REFEREE TO SET ASIDE HIS OWN JUDGMENT—RULES OF SUPREME COURT, Ord. XXXVI, rr. 33, 49, 50; Ord. LIX*A*, r. 3 (*b*).

Rules of the Supreme Court, Order 36, *r.* 33: "*Any verdict or judgment obtained where one party does not appear at the trial may be set aside by the court or a judge upon such terms as may seem fit, upon an application made within six days after the trial. . . .*"

Rule 49: "*. . . and every such trial* [*before a referee*] *shall be conducted in the same manner, as nearly as circumstances will admit, as trials are conducted before a judge.*"

Rule 50: "*Subject to any such order as last aforesaid, the referee shall have the same authority . . . in the conduct of any reference or trial, and the same power to direct that judgment be entered for any or either party, as a judge of the High Court.*"

Order 59*A*, *r.* 1: "*There shall be right of appeal from any finding, decision, order, or direction, and from any judgment entered or signed by leave, order or direction of an official or special referee in any action, cause or matter . . . referred to him for trial or decision . . .*"

Rule 2: "*In the case of a finding, decision, order, direction or judgment arrived at, made, given, directed or entered on the trial or hearing of any action, cause or matter . . . the appeal shall lie . . .* (2) *In the King's Bench Division to a Divisional Court. . .*"

Rule 3: "*In the cases provided for by r.* 2, *the following provisions shall apply:—*

"(b) *The appeal shall be brought by notice of motion to set aside or vary the finding, decision, order, direction or judgment or the assessment or award appealed against . . . Save as herein provided, no application for a new trial before a referee shall be made.*"

An Official Referee has power to set aside his own judgment in a case heard in the absence of one of the parties.

Appeal from an Official Referee. The plaintiffs brought an action against the defendants which was referred to an Official Referee on 3rd March, 1925. The plaintiffs on 12th February, 1926, amended their points of claim, the defendants' solicitors not opposing as they had no instructions from their clients, who resided in Moscow. The Official Referee fixed the trial of the action for 26th February. The defendants' solicitors on 24th February applied to the Official Referee for a postponement of the trial on the ground that, owing to the short notice, they were not properly instructed. The Official Referee made no order, but gave the defendants' solicitors leave to apply again for a postponement provided a telegram was sent to the defendants at Moscow and a reply was received from them stating that they would defend the action. A telegram was accordingly sent, and a reply was received from the defendants asking for a postponement for two months, but not stating that they would defend the action.

On 26th February, the action came on for trial before the Official Referee. The defendants' representatives again

applied for a postponement on the ground that they were not ready for trial as they were not sufficiently instructed, their clients being abroad. The Official Referee offered to postpone the trial if the defendants' counsel would give an undertaking as to costs. The defendants' counsel was, however, unable to give this undertaking in the absence of instructions, and accordingly the trial of the action proceeded, the defendants' counsel and solicitor leaving the court. The Official Referee gave judgment for the plaintiffs.

The judge in chambers, on 19th March, dismissed an appeal by the defendants, but referred to the Official Referee the application to set aside the judgment. No point was taken before the judge in chambers that the application was out of time, but on the matter coming before the Official Referee on 29th March, he took the point that the application had not been made within six days of the trial as required by Ord. 36, r. 33, of the Rules of the Supreme Court; and, secondly, that he had no jurisdiction to set aside his own judgment, having regard to Ord. 59A, r. 3 (*b*), and he accordingly dismissed the application.

The defendants appealed.

SALTER, J.: The Official Referee took two points (1) that the application had not been made within six days of the trial; and (2) that he had no jurisdiction to set aside his own judgment. The principle laid down in *The Ottokar*, 1921, W.N. 266, governed the first point. An objection as to time not taken at the first opportunity ought not to be relied upon now. On the second point, there was no doubt that a judge of the High Court in similar circumstances would have power to set aside his own judgment upon a proper application. The proper course would then be to apply to the judge to restore the case to the list; see *Vint* v. *Hudspith*, 1885, 29 Ch.D. 322. Had an Official Referee the same power? An Official Referee was not an arbitrator appointed by the parties: he was appointed by the court and was in all essentials a judge. There were no limitations to be placed on the words of Ord. 36, r. 50, to prevent an Official Referee from exercising the same powers as a High Court judge had in setting aside his own judgment. It was argued that the concluding words of Ord. 59A, r. 3 (*b*), prevented an Official Referee from exercising that power. That rule, however, only meant that an application for a new trial should not be by way of a rule *nisi*, but by notice of motion. In fact the whole of that Order had reference in the King's Bench Division to a Divisional Court, and not to an application to an Official Referee to set aside his own judgment. The Official Referee here had not exercised his discretion in the matter, and the case must go back to him to deal with the application.

COUNSEL: For the appellants: *K. S. Carpmael*, and *A. Krougliakoff*; for the respondents: *S. L. Porter*, K.C., and *N. A. Beechman*.

SOLICITORS: For the appellants: *Ince, Colt, Ince & Roscoe*; for the defendants: *Gellatly, Son & Fyfe*.

[Reported by COLIN CLAYTON, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

In re **Dalley.** Hill, J. 28th June and 5th July.

LIMITED ADMINISTRATION—GRANT TO *cestui que trust* OF TRUST ESTATE—SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925, 15 & 16 Geo. 5, c. 49, s. 155 (1)—LAW OF PROPERTY ACT, 1925, 15 & 16 Geo. 5, c. 20, 1st Sched., Pt. II, para. 6 (*c*), and para. 8—SETTLED LAND ACT, 1925, 15 & 16 Geo. 5, c. 18, ss. 2, 3 and 19—ADMINISTRATION OF ESTATES ACT, 1925, 15 & 16 Geo. 5, c. 23, 1 (1) and 31 (1).

Where a testator dying in 1897 *appointed his wife A, sole executrix and devised to her for life all his real estate with remainder to B in fee simple absolutely, and A died in February,* 1926, *intestate and a widow leaving no statutory next-of-kin and no trustees for the purposes of the Settled Land Act,* 1925, *were ever appointed, B was held entitled under s.* 155 (1) *of the Supreme Court of Judicature (Consolidation) Act,* 1925, *to a grant of limited administration in respect of such real estate.*

This was a motion by Richard Dalley Warren a *cestui que trust* of a trust estate made under s. 155 (1) of the Supreme Court of Judicature (Consolidation) Act, 1925, for a separate grant of administration limited to the trust estate. The facts were as follows: Richard Dalley died on the 18th December, 1897, having by his will, dated 7th December, 1897, appointed his wife, Ann King Dalley, sole executrix, and devised to her for life all his real estate with remainder to Richard Dalley Warren (the applicant) in fee simple absolutely. Probate of this will was granted to Ann King Dalley on 5th January, 1898. The only real estate of which Richard Dalley died possessed consisted of a cottage at Ampthill, in the County of Bedford, of the estimated value of £130. On the 1st January, 1926, by the operation of the Law of Property Act, 1925, 1st Sched., Pt. II, para. 6 (*c*), the fee simple in the said property as settled land (see Settled Land Act, 1925, ss. 2 and 19), became vested in Ann King Dalley as tenant for life and trustee (see Law of Property Act, 1925, 1st Sched., Pt. II, para. 8), and the legal estate formerly vested in Richard Dalley Warren was converted into an equitable interest. Ann King Dalley died on the 22nd February, 1926, intestate and a widow, leaving no statutory next-of-kin without real or personal estate other than the trust estate vested in her. No trustees for the purposes of the Settled Land Acts were ever appointed in respect of the settled land. On the death of Ann King Dalley the said property ceased to be settled land (see Settled Land Act, 1925, s. 3), and Richard Dalley Warren became entitled to a conveyance of the fee simple therein discharged from the trusts of the settlement. The fee simple in question being held in trust by Ann King Dalley was a trust estate devolving on her personal representatives by virtue of the Administration of Estates Act, 1925, ss. 1 (1) and 3 (1) (i). Richard Dalley Warren moved that letters of administration be granted to him in respect of the trust estate vested by virtue of the Law of Property Act, 1925, 1st Sched., Pt. II, paras. 6 (*c*) and (8) in Ann King Dalley. There was no person entitled to a general grant of administration nor was there any property in respect of which a general grant could take effect. The Supreme Court of Judicature (Consolidation) Act, 1925, c. 49, s. 155 (1) is as follows: "Probate or administration in respect of the real estate of a deceased person, or any part thereof, may be granted either separately or together with probate or administration of his personal estate, and may also be granted in respect of real estate only where there is no personal estate, or in respect of a trust estate only, and a grant of administration to real estate may be limited in any way the court thinks proper."

HILL, J., made the order as asked.

COUNSEL: *J. R. Perceval Maxwell.*

SOLICITORS: *Burton, Yeates & Hart*, for *Wratislaw, Dean and Bretherton.*

[Reported by L. MORGAN MAY, Esq., Barrister-at-Law.]

NEW RATING AND VALUATION RULES.

A circular (No. 714) has been issued by the Ministry of Health, directed to county councils (excluding London), county boroughs, non-county boroughs, urban and rural district councils, and boards of guardians (outside London), in relation to the Rating and Valuation Act, 1925. The form and contents of the principal documents which are to be used under the Act are described in detail, and it is stated that the form of rate book and other forms of account to be used by rating authorities and their officers under the Act are at present being considered in consultation with the associations of local authorities, and a further communication as to these will be addressed to rating authorities in due course. It is added that, subject to compliance with the minimum requirements of the statutory rules and orders, the discretion of local authorities is not limited as to the amount of detail which may be given.

Societies.

The Law Society.

LAW OF ARBITRATION COMMITTEE.

At a recent meeting of the Council of The Law Society a letter was read from the Secretary of the Lord Chancellor's Departmental Committee, stating that the committee had been appointed under the chairmanship of Mr. Justice MacKinnon to consider and report whether any and, if so, what alterations are desired in the law relating to arbitration, and, in particular, to submissions, arbitrations, and awards made or held in England and Wales, or the law relating to the effect given in England and Wales, to submissions, arbitrations, and awards made or held elsewhere. The committee invited the council to submit to them a memorandum containing any views they might desire to express upon the matter and stated that, if they would wish to support their memorandum by oral evidence, the committee would on receipt of their memorandum consider their request. The Council were asked also to bring the committee's letter to the notice of the provincial law societies.

The letter was referred to the Legal Procedure Committee with power to act.

INCOME TAX.

A letter was read and laid on the table from the Board of Inland Revenue, referring to the fact that no opportunity had arisen at the recent deputation to the Chancellor of the Exchequer for bringing to his notice the suggestion that a liaison should be set up between the Income Tax Department on the one hand, and The Law Society and the Institute of Chartered Accountants on the other, to take advantage of the knowledge and experience of the two professions in relation to income tax matters, stating also that the board had not lost sight of the suggestion, but that in the interval since it was made in December, 1924, no occasions had arisen which would lead them to think that a form of machinery of the kind proposed would serve a useful purpose. They were disposed to think that in the nature of things such occasion could not be of frequent occurrence, as the societies would be aware that the department possessed its own legal and accounting staffs. The board, however, were glad to feel that they had the assistance of the two professions at hand, and would not hesitate to avail themselves of their help at any useful opportunity.

PROBATE RECORDS.

A letter was read from the chairman of a committee which had been appointed by the President of the Probate Division to consider and report as to the custody and future care of ancient records now in the principal and district probate registries, inviting the opinion of solicitors on the question.

It was resolved that letters be addressed to the provincial law societies particularly concerned, namely, those in whose area there is or has been a probate registry, inviting their views.

FUTURE EXAMINATIONS.

The Society's examinations will be held on the following dates: Preliminary, October 13th and 14th; Intermediate, November 3rd and 4th; Final, November 1st and 2nd; Honours, November 8th, 9th and 10th.

STUDENTSHIPS.

The Council, acting on the recommendation of the Legal Education Committee, have made the following award for 1926, of studentships of the annual value of £40 each, tenable for one year, but renewable at the discretion of the Council:—

CLASS A (For candidates under 19.)

Mr. WALTER NICHOLAS PASSMORE (Downside School).

Mr. WILLIAM HENRY TILLEY (Dudley Grammar School and University of Birmingham).

ADDITIONAL STUDENTSHIP OF £40 TENABLE FOR ONE YEAR ONLY.

Mr. ALAN EDWARD OLIVER (Acton County School).

CLASS B (For articled clerks having at least three years to serve.)

Mr. SAMUEL HERBERT BROOKFIELD (Sedburgh and University of Liverpool).

HIGHLY COMMENDED IN CLASS B.

Mr. ARTHUR LESLIE BOSTOCK (Parmiters Foundation School and Birkbeck College).

Mr. EDWARD WILLIAM TILLEY (Queen's College, Taunton, and The Law Society).

Mr. Passmore is articled with Mr. R. Wordsworth, of London; Mr. Tilley with Mr. W. C. Camm, of Dudley; Mr. Oliver with Mr. A. C. Dowding, of London; and Mr. Brookfield with Mr. J. Husband, of Liverpool.

Law Association.

The usual monthly meeting of the directors was held at The Law Society's Hall, on Thursday, the 8th inst., Mr. J. R. H. Molony in the chair. The other directors present were Mr. J. D. Arthur, Mr. W. B. Curwen, Mr. P. E. Marshall, Mr. A. E. Pridham, Mr. John Venning, Mr. W. M. Woodhouse, and the Secretary, Mr. E. E. Barron. A sum of £115 was voted in relief of deserving applicants; a new life member was elected and other general business transacted.

Solicitors' Benevolent Association.

The monthly meeting of the Board of Directors of this association was held at The Law Society's Hall, Chancery-lane, London, on the 14th inst., Mr. Alan G. Gibson in the chair. The other directors present were Messrs. F. E. F. Barham, A. C. Borlase (Brighton), E. R. Cook, T. S. Curtis, C. G. May, H. A. H. Newington, F. L. Steward (Wolverhampton), M. A. Tweedie and A. B. Urmston (Maidstone). £2,340 was distributed in grants of relief; sixteen new members were admitted; Mr. J. Livingstone Wood (Worcester) was elected as a director, and other general business transacted.

University College.

The following awards have been made in the Faculty of Laws at University College:—

Readers' Prizes in Equity: A. T. Roach (Second Year Student); H. E. Davies (Third Year Student).

Fellow's Scholarship: G. G. Slack.

The Manchester Law Society.

The Annual Meeting of this Society was held on Tuesday, the 20th inst., at the Law Library, Manchester, Mr. H. Derwent Simpson, the retiring President, being in the chair.

The Report of the Council for the past year showed a record total membership of 411, and dealt with the work of the Council in connection with, amongst other matters, the Law of Property Acts, the new Poor Persons Procedure, the Coroners Bill, Special Jury Panels and Divisional Courts at Assizes. The Report stated that the General Conditions of Sale issued by The Law Society had been carefully considered, but that the Council were of opinion that the Manchester Society should not adopt them, but that the Manchester Conditions of Sale should be revised, and these had been carefully revised accordingly. Reference was made to a large number of recommendations for amendments to the Law of Property Acts received from members in response to a circular letter sent out in pursuance of a request from The Law Society for particulars of difficulties experienced as the result of the practical working of the Acts. The Report stated that the Amending Act recently passed had met some of the difficulties, but by no means all, and that it was probable that a number of other Amending Acts would be called for. A Poor Persons Committee had been appointed, and had been dealing with applications since the 6th April, on which date the responsibility for the new procedure was taken over by The Law Society, and up to the 1st July last, 161 applications had been received and dealt with, including twenty-one received from outside the district, and transferred to other societies. The Report also referred to the steps taken in conjunction with the Liverpool Society with reference to the unsatisfactory nature of the special jury panels at Manchester and Liverpool Assizes, and that the two societies had urged upon the authorities the necessity for an amendment of the law whereby occupation of premises assessed at £100 per annum without residence, and also a directorship of a limited company occupying such premises, would qualify for service as a special juror. The two societies had also acted together in representing to the Lord Chief Justice the desirability of two Assize Judges sitting as a Divisional Court at Assizes to hear appeals from local county courts, and also from petty sessions and arbitrations, so as to enable the public to appeal in cases where at present they were prevented from doing so on account of the prohibitive cost.

In his presidential address, Mr. Simpson referred to the Centenary of The Law Society, and pointed out how it has given an opportunity to the better informed of the public to make recognition of the great value of the work done by the Society for the public. He also referred to the coming into force of the Law of Property Acts, which swept away the most substantial remnants of the law of real property which owed their origin to the Feudal system. In regard to the new poor persons procedure, he believed that the

principle of this procedure would have a far-reaching effect, and that a precedent in administrative machinery had been established that might hereafter be adapted and applied to many other professional activities than those comprised in the present rules. So far as Manchester was concerned, solicitors had loyally risen to the occasion, although all the local solicitors had not undertaken the conduct of cases, but it was hoped and expected that those who had not yet done so would speedily do so, and thereby lessen the contribution of each undertaking solicitor. He mentioned that it was the good fortune of the Manchester Poor Persons Committee to have secured the services of Mr. K. T. S. Dockray as Honorary Secretary, who was carrying out the exacting work called for in a manner highly gratifying to all concerned in the efficient administration of the procedure in the district. In conclusion the President called attention to the number of prizes available for law students of Manchester and Salford that had not been awarded in recent years because no student had qualified himself for them, and stated that the subject had been referred to the Legal Education Committee, and that he hoped they would be able to direct articled clerks in the way of obtaining these prizes.

The following officers were elected: President, Mr. Adam Fox; Vice-President, Mr. Peter John Skelton; Hon. Treasurer, Mr. G. H. Charlesworth; Hon. Secretary, Mr. K. H. Atkinson.

The International Law Association.

THIRTY-FOURTH CONFERENCE.

The Thirty-fourth Conference of the International Law Association will be held at Vienna from 5th to 11th August. There will be a strong British delegation, representing the legal profession and business and commercial interests. The President of the Association is Dr. Hammarsjöld, the Swedish statesman-jurist, Governor of Upsala, and those presiding over various sections of the Conference will include Lord Phillimore, Sir Alfred Hopkinson, K.C., M.P., Dr. Walter Simons, President of the German Supreme Court, Dr. Van Slooten Azn, Judge of the Dutch Court of Appeal, Dr. Algot Bagge, Judge of the Swedish Court of Appeal, Judge Caloyanni, formerly of the Cairo Court of Appeal, Maître Leopold Dor, Dr. Paul Abel, Señor Alvarez, and Dr. Gustav Walker, who will be President of the Conference.

The business programme is as follows:—

Wednesday, 4th August.—8.30 p.m.: Meeting of Executive Council.

Thursday, 5th August.—10 a.m.: Conference opens in the Imperial Palace. Report of Executive Council and election of Conference officers. Report of Revision of Rules Committee. Inaugural Address by the President, Dr. Gustav Walker. 3 p.m.: Report of Neutrality Committee Territorial Waters. Report of C.I.F. Contracts Committee. Report of Conflict of Laws Committee.

Friday, 6th August.—10 a.m.: Neutrality, C.I.F. Contracts, and Conflict of Laws discussions continued. 3 p.m.: Report of the International Criminal Court Committee. Report of the Rate of Exchange Committee. Conflict of Laws (continued).

Saturday, 7th August.—10 a.m.: International Criminal Court, Rate of Exchange, Conflict of Laws (discussions continued).

Monday, 9th August.—10 a.m.: Report of Rights of Minorities Committee. Papers by M. René Brunet, Professor Geza de Magjary, and Dr. J. L. Kunz. Rate of Exchange and Conflict of Laws (continued).

Tuesday, 10th August.—10 a.m.: Report of Protection of Private Committee. Report of Commercial Arbitration Committee. Conflict of Laws (continued). 3 p.m.: Report of Committee on Laws of Aviation and Wireless. Report of International Bankruptcy Committee. Conflict of Laws (continued).

Wednesday, 11th August.—10 a.m.: Report of Codification Committee. Papers by Lord Phillimore ("Representation of States"), M. Palewski ("Extradition") and others. "Social Insurance," by Professor A. Manes. Report of Unfair Competition Committee. Conflict of Laws (continued). 3 p.m.: Status of "League of Nations," by Sir J. Fischer Williams, K.C. End of Conference.

Dr. Emil Hofmannstahl, Vice-President of the Vienna branch of the Association, has arranged the following programme of social functions:—

Wednesday, 4th August.—9 a.m.: Special steamer leaves Linz for Danube trip to Vienna. Noon: Visit to Melk Monastery. 7 p.m.: Arrival in Vienna.

Thursday, 5th August.—7.30 p.m.: Reception by City of Vienna.

Friday, 6th August.—5 p.m.: Visit to Laxenburg.

Saturday, 7th August.—5 p.m.: Reception by President of Austrian Republic at Semmering.

Sunday, 8th August.—Visit to the Schneeburg.

Monday, 9th August.—2 p.m.: Visit to Kreuzenstein Castle and Klosterneuberg.

Tuesday, 10th August.—8 p.m.: Reception by Dr. L. Waber, Vice-Chancellor and Minister of Justice.

Wednesday, 11th August.—8 p.m.: Reception by International Law Association at the Berchtold Palace.

Thursday, 12th August.—Visit to the Rax Mountain.

Friday, 13th August.—Danube trip to Budapest.

Saturday, 14th August.—Reception by Budapest Municipality.

Rules and Orders.

THE PUBLIC HEALTH (IMPORTED MILK) REGULATIONS, 1926,

DATED 6TH JULY, 1926, MADE BY THE MINISTER OF HEALTH.

The Minister of Health, in the exercise of the powers conferred upon him by the Public Health Act, 1875,(*a*) the Public Health (London) Act, 1891,(*b*) the Public Health Act, 1896,(*c*) the Public Health (Regulations as to Food) Act, 1907,(*d*) and Section 8 of the Milk and Dairies (Amendment) Act, 1922,(*e*) and of every other power enabling him in that behalf, hereby makes the following Regulations, that is to say:—

1. These Regulations may be cited as the Public Health (Imported Milk) Regulations, 1926, and shall come into operation on the 1st day of January, 1927.

2. (1) In these Regulations, unless the context otherwise requires—

"The Minister" means the Minister of Health.

"Sanitary Authority" means a Port Sanitary Authority and the Council of a Borough or Urban or Rural District which includes or abuts on any part of a Customs port which part is not within the jurisdiction of a Port Sanitary Authority.

"District" means the District of a Sanitary Authority, and in the case of a Sanitary Authority other than a Port Sanitary Authority, includes the waters of any Customs port abutting on any part of their district so far as such waters are not within the district of a Port Sanitary Authority.

"Milk" means milk (including skimmed milk and separated milk but not including condensed or dried milk) which is intended for sale for human consumption or for use in the manufacture of products for human consumption.

"British Islands" means Great Britain and Ireland, the Channel Islands, and the Isle of Man.

"Imported Milk" means milk imported into England or Wales from any place situated outside the British Islands.

(2) The Interpretation Act, 1889,(*f*) applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

3. (1) Every Sanitary Authority shall enforce and execute these Regulations and shall keep a Register of persons to whom milk imported into their district may be consigned.

(2) Any Officer of the Sanitary Authority duly authorized in that behalf, may take a sample of any milk imported into the district.

4. No person shall receive any milk consigned to him from any place outside the British Islands unless he is registered under these Regulations by the Sanitary Authority into whose district the milk is imported.

5. All imported milk shall be in such condition that, on a sample being taken within the district of a Sanitary Authority, the milk shall be found to contain not more than 100,000 bacteria per cubic centimetre and to be free from tubercle bacilli.

6. (1) If the Sanitary Authority are satisfied that any milk imported into their district does not comply with the provisions of these Regulations, they may serve upon the person to whom the milk was consigned a notice to appear before them not less than seven days after the date of the notice, to show cause why they should not, for reasons to be specified in the notice, remove him from the register, either absolutely or in respect of any specified source of supply, and if he fails to show cause to their satisfaction accordingly they may remove him from the register.

(2) Any person aggrieved by any such decision of the Sanitary Authority as aforesaid may, within twenty-one days, appeal to a Court of Summary Jurisdiction and that Court may require the Sanitary Authority not to remove him from the register.

(*a*) 38-9 V. c. 55. (*b*) 54-5 V. c. 76.
(*c*) 59-60 V. c. 19. (*d*) 7 E. 7. c. 32.
(*e*) 12-3 G. 5. c. 54. (*f*) 52-3 V. c. 63.

(3) The Sanitary Authority, or such person as aforesaid, may appeal from the decision of the Court of Summary Jurisdiction to the next practicable Court of Quarter Sessions, and that Court may confirm, vary or reverse the Order of the Court of Summary Jurisdiction.

(4) The decision of a Sanitary Authority to remove any person from the register shall not have effect until the expiration of the time for appeal to a Court of Summary Jurisdiction, nor if any such appeal is brought until the expiration of seven days after the determination thereof, nor if notice of appeal to Quarter Sessions is given within such seven days until such appeal is finally determined unless such appeal ceases to be prosecuted.

(5) Where, in pursuance of the foregoing provisions of this Article, a person is removed from the register of a Sanitary Authority, the Sanitary Authority shall report the facts to the Minister, and if the Minister on consideration of such facts is of opinion that that person should be removed from the register of any other Sanitary Authority or should not be included in such register either absolutely or in respect of any specified source of supply he may direct such Sanitary Authority so to remove such person from their register or to refuse so to register him as the case may be and such Sanitary Authority shall forthwith comply with the Minister's direction.

7. A person shall, if so required, give to any officer of a Sanitary Authority acting in the execution of these Regulations all reasonable assistance in his power and shall in relation to anything within his knowledge furnish any such officer with all information he may reasonably require for the purposes of these Regulations.

Given under the Official Seal of the Minister of Health this Sixth day of July, in the year One thousand nine hundred and twenty-six.

(L.S.) *R. B. Cross,*
Assistant Secretary, Minister of Health.

NOTE.—The Public Health Act, 1896, provides by Subsection (3) of Section 1 that if any person wilfully neglects or refuses to obey or carry out, or obstructs the execution of any regulations made under any of the enactments mentioned in that Act, he shall be liable to a penalty not exceeding £100, and in the case of a continuing offence, to a further penalty not exceeding £50 for every day during which the offence continues.

The power of making regulations under the Public Health Act, 1896, and the enactments mentioned in that Act, is enlarged by the Public Health (Regulations as to Food) Act, 1907, as amended by the Milk and Dairies (Amendment) Act, 1922.

Legal Notes and News.

Professional Information.

The firms of Messrs. BATCHELOR & COUSINS, solicitors, of 2, Pancras-lane, and of Messrs. FOORD & SON, of 16, Philpot-lane, have been amalgamated as from Monday last, the 19th inst. Their practice will be carried on at 2 Pancras-lane, Queen-street, E.C., under the name of Messrs. BATCHELOR, FOORD & NORTH.

Partnerships Dissolved.

C. F. LEIGHTON, E. J. C. SAVORY, and E. N. MEYER, solicitors, 61 Carey-street, Lincoln's-inn, London, W.1, under the style of Leighton and Savory.

Appointments.

The King has been pleased to approve the appointment of Mr. Maung Ba to be a puisne Judge of the High Court of Judicature at Rangoon in succession to Mr. Justice Maung Gyi, who has been appointed a member of the Executive Council of the Governor of Burma.

Mr. HORACE W. SKINNER, LL.B. (Lond.), solicitor (Deputy-Clerk), is recommended for the appointment of Clerk of the Peace and Clerk to the Derbyshire County Council in succession to Mr. N. J. Hughes Hallet, who has resigned. Mr. Skinner was admitted in 1906.

Wills and Bequests.

Sir Charles George Walpole, of Kensington Court, Kensington, W., formerly Chief Justice successively of the Leeward Islands, of Gibraltar, and of the Bahamas, author of several legal and historical works, who died on 24th May, aged seventy-seven, left estate in his own disposition of the gross value of £28,697.

Mr. Hugh William Pearson, solicitor, of West Garth, Malton, Yorks, formerly solicitor to the Malton Estate of Lord Fitzwilliam, died on 21st April, aged seventy-five, leaving estate of the gross value of £36,076. He left £100 to the building fund of the New Cottage Hospital, Malton.

Mr. Richard Glyn Edwards, solicitor, of Fisher Street, Swansea, and of Parkhill, Glamorgan, of Messrs. R. G. Edwards and Bull, of Swansea, solicitors, left estate of the gross value of £12,510.

Mr. Arthur Augustus Walker (70), solicitor, of Glisson Road, Cambridge, left estate of the gross value of £12,922.

Mr. Charles Reginald Garveys Grylls, solicitor, of the White Hart Hotel, Launceston, left unsettled estate of the gross value of £15,935.

Mr. Arthur Leopold Miers, solicitor, left estate of the gross value of £4,580.

Mr. Joseph Durance, solicitor, Lincoln, left estate of the gross value of £9,353.

Mr. Richard Glyn Edwards, solicitor, of the firm of Messrs. R. G. Edwards & Bull, Swansea, left estate of the gross value of £12,510.

Mr. Charles Welch Williams, solicitor, left estate of the gross value of £3,514.

Mr. Hugh William Pearson, solicitor, Malton, Yorks, who died on the 21st April, aged seventy-five, left estate of the gross value of £36,076.

CENTRAL CRIMINAL COURT.

The Home Secretary, Sir William Joynson-Hicks, visited the Central Criminal Court, on Tuesday, and occupied a seat on the Bench in Court II, where the Recorder (Sir Ernest Wild, K.C.) was engaged in the trial of cases.

AMENDMENT OF TRADE UNION LAW.

In the Lords the debate on Lord Banbury's Bill to repeal the Trade Disputes Act was adjourned upon an important statement from the Lord Chancellor.

A Cabinet Committee on the whole question of trade union law was about to report, and the Government would, he thought, be bound to make immediate proposals. Merely to repeal the Act of 1906 would be unfair and ill-considered. The Government would be no party to an attack on trade unionism. The points, however, which they had to consider and deal with were the development of picketing into crowd intimidation and domiciliary visits. As a result of the general strike, they must decide whether victimization of loyal men should be expressly forbidden, a ballot before a strike insisted on, and what should be the permitted limits of action by civil servants. The general object must be only to protect the public and the working classes themselves from suffering and injustice. Such measures might require more than one Bill, and in any case they could only be dealt with on the responsibility of the Government of the day.

THE CROWN AND A TREATY OBLIGATION.

The Royal Commission on Awards to Inventors, sitting at the Law Courts on Monday of last week, under the chairmanship of Mr. Justice Tomlin, had before it the claim of M. A. Dagory, a French engineer, in respect of a method of decoppering guns.

Mr. Stafford Cripps, for the claimant, said that this was an extremely valuable invention, and its purpose was to maintain the accuracy of guns and to cure the very serious evil known as coppering. As the shell was driven through the gun a small portion of copper from it plated itself inside the gun. When war broke out the claimant was an officer of the reserve in the French Army, and it was his duty to test shells. Coppering affected the accuracy of firing, and claimant set himself to try to remedy it. He found that by adding strips of tinfoil to the base of the shell he prevented coppering, and ensured the firing of the guns being accurate. It took the French Government five months to accept this.

At this stage some discussion took place on a point raised by the Crown concerning a treaty entered into between France and England during the war in regard to communicating inventions. The question raised was whether the terms of the treaty precluded the claimant from making any claim before the Commission. Mr. Justice Tomlin directed the Crown to communicate with the Foreign Office to see if there were such a treaty and what its terms were, and then the Commission would, he said, decide whether the claimant was within or without the treaty.

CHANGES IN CRIMINAL LAW.

The Recorder (Sir Ernest Wild, K.C.), in charging the grand jury at the Old Bailey, on Monday, pointed out some important changes in the law made by the Criminal Justice Act, parts of which came into operation on 1st July. He welcomed the change made in regard to putting offenders on probation, he said. If there were one thing which had done good in helping young people who had made their first slip it was the salutary system of probation, as a consequence of which thousands of young folk had been saved from a career of crime after making an initial error. Another interesting section would facilitate criminal investigations, because it provided that if a juror died, or became incapable through illness, or other cause, of discharging his functions, his colleagues could carry on in his absence. There had been several instances at the Old Bailey, Sir Ernest remarked, in which cases had gone on for several days, and where, owing to a juror being taken ill, they had had to be begun *de novo*, causing great expenditure of time and money, as well as hardship to the accused person. Another section to which attention should be directed was that which made the taking of photographs or the making of sketches in courts of law, or their precincts, punishable. It would put a stop to the photographing or sketching of judges, members of juries, witnesses, or the parties in cases. Some of them might be pleased by the enforcement of this regulation, and some might not. Sir Ernest added that he was glad to note that the jurisdiction of grand juries was not touched by the Act. It was borne in upon him more and more strongly, the longer he sat there, that grand juries were an essential part of the administration of British justice.

Referring to the Criminal Justice Act at the Marylebone Police Court, on Monday, Mr. Bingley said that if magistrates exercised all their powers, the London Sessions and the Central Criminal Court would have nothing to do. "In fact," he added, "as Mr. Hay Halkett remarked the other day, we magistrates, with the consent of the accused, can now try practically everything except murder. What are the Sessions and the Central Criminal Court going to amuse themselves with?"

Mr. Freke Palmer: And what will counsel practising there come to?

Mr. Bingley: Starvation.

TRADE ARBITRATION AS A LEGAL STUDY.

The American system of teaching law has always been keenly admired by English lawyers familiar with it. The methods adopted are so thorough and the range of subjects is attractively extensive. It is with interest, therefore, that we read, in the *Christian Science Monitor*, of the new advances to be made next session. It appears that separate courses in civil and commercial arbitration are to be offered at New York University and the New Jersey Law School. The force behind this new movement is the American Arbitration Association. Hitherto the subject to be dealt with in this new course has been treated, by many colleges and universities, as a part of certain comprehensive courses in law and economics.

The course at New York University will be open to graduate students in the business and law schools, and in connection with it a seminar will be conducted in which the problems of arbitration will form the subject of discussion.

The course at New Jersey Law School will be open to senior students. Boston University will also have a lecture course on commercial arbitration in 1926.

The immediate obstacle to the extension of arbitration study seems to be the absence in the United States of any authoritative publications suitable for instruction.

It is proposed to meet this need by collaborating in the compilation of a series of suitable textbooks. Pending their completion, leaflets will be published containing available information and data.

A case-book or business practice in settling disputes by arbitration is among the first of these books to be prepared, also a case-book on legal practice in arbitration, and a set of annotated statutes will be prepared and compiled in collaboration.

AN ILLEGAL ADVERTISEMENT.

At the Mansion House recently, before the Lord Mayor, the Premium Trading Company, Limited, of 84, High Holborn, were summoned for an infringement of s. 2 of the Moneylenders Act, 1911, in that, being moneylenders, they, in the course of their business, caused to be published a newspaper advertisement containing expressions which might reasonably be held to imply that they carried on a banking business. Mr. R. F. Levy was counsel for the defence.

Mr. W. S. Bourne, who prosecuted for the Board of Trade, said the defendants were incorporated as a company in 1922 with a capital of £1,500, of which £1,200 was called up. There were four directors, with Jewish names, all described as British subjects. They were registered as moneylenders in October, 1925. On 19th and 20th May the following advertisement appeared in the *Daily Telegraph*: "Merchant bankers lend daily by new methods from £5 to £5,000 on stock-in-trade, personal guarantee, life policies, furniture without removal, &c. Low interest. Full amounts granted. The Premium Trading Company, Limited, 84, High Holborn, London." On Detective Inspector Stubbings serving the summons, Mr. Gustav H. Lyons, the secretary, who was also a director, said they would not have inserted the advertisement if they had not thought it was all right; they had been in communication with the Board of Trade as to whether they could use the words "merchant bankers," and no objection was raised. On the window of the office the words "Merchants, Bankers and Financiers" appeared.

Mr. R. F. Levy, for the defence, submitted that the company's two businesses—merchant bankers and moneylenders—could be lawfully carried on at the same time and side by side. City merchants frequently found themselves at very short notice wanting money to liberate goods sent to them from abroad, and the defendant company advanced money on the security of dock warrants, stock-in-trade, &c. The term "moneylenders" was not applicable to activities like that, but "merchant bankers" was.

Evidence in support of this statement was given. In the end the Lord Mayor ordered the company to pay a fine of £25 and £5 5s. costs.

DATING OF PATENTS COMMITTEE.

A committee has been appointed by the Board of Trade to consider whether any, and, if so, what change is desirable in the practice of

(*a*) Dating patents, applied for under s. 91 of the Patents Acts, as of the date of application in the foreign state; and

(*b*) Dating patents granted upon ordinary applications as of the date of application in the United Kingdom.

The main question which the committee has to examine is whether this practice should be continued, or whether patents granted upon applications made under s. 91 should bear some later date, such as the date of application in this country or the date of grant of the patent, while still giving the applicant the priority as regards inventorship which must be given to him under international arrangements.

The committee will be glad to receive suggestions or representations upon the matters covered by their terms of reference. In considering the questions involved, the committee desires that due regard should be paid to all the interests involved, i.e., the interests of inventors, manufacturers, consumers and the public generally. Communications should be addressed to the Secretary to the Committee, Mr. B. G. Crewe, The Patent Office, 25, Southampton-buildings, London, W.C.2.

THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Members of the Anglo-American Conference of Historians went to Whitehall on Thursday 15th inst., and were present at the sittings of the two divisions of the Judicial Committee of the Privy Council. They were received by Mr. W. Reeve Wallace, the Chief Clerk, and visited first the Council Chamber, where special seats had been reserved for them. They remained for some time listening to the arguments in an appeal from a decision of the Supreme Court of the Gold Coast, relating to a land dispute, which was being opened before the Lord Chancellor, Lord Darling, and Lord Justice Warrington. They then went to the Board Room, adjoining the Council Chamber, where Lord Atkinson, Lord Carson, and Sir John Wallis were engaged in hearing an Indian appeal.

"SHINGLING WITHOUT PERMIT."

A warning to wives who neglect to consult their husbands before visiting the hairdresser to have their hair shingled was given in a Paris court on the 1st inst. Madame Chaplin left home because she alleged that her husband insulted her after she had had her hair shingled. M. Chaplin obtained a deed of separation for desertion. The wife brought in a counter-suit, but judgment was given against her on the ground that "however insulting the epithets used by the husband might have been, they were justified by the fact that the wife had her hair shingled without her husband's permission."

KING EDWARD'S HOSPITAL FUND FOR LONDON.

We have pleasure in stating that Miss Ruth Draper has generously offered to give a farewell performance of her famous "character sketches" in aid of King Edward's Hospital Fund for London, before her return to America. This will give those who have not been able to see her at the Garrick Theatre during her recent matinees, one more opportunity of doing so. It is also Miss Draper's wish to do something for the London Voluntary Hospitals before she leaves. The performance will be held at the Ambassadors' Theatre, on Wednesday, 28th July, at 5 o'clock, by kind permission of Mr. H. M. Harwood and Miss Sybil Thorndike, to whom the fund is also deeply indebted for their valuable co-operation. The programme will include dances by Miss Helen May. Tickets: (Stalls and Box Seats, £1 1s.; Dress Circle, 12s. 6d.; Upper Circle and Pit Stalls, 5s); will shortly be obtainable from the Secretary, King Edward's Hospital Fund for London, 7, Walbrook, E.C.4, or the Box Office of the Theatre, and from any of Keith, Prowse's branches.

NEW REGULATIONS AS TO STREET COLLECTIONS.

New regulations by the Home Secretary, governing street collections of money and the sale of articles for other than trade purposes within the metropolitan police district, have just been published. Applications for permits must be made to the Commissioner of Police, who will refer them to an advisory committee, appointed by the Commissioner and approved by the Home Secretary, not less than one month before it is proposed to hold the collection or sale.

Collectors or vendors must not be under the age of eighteen. Each collector must occupy a stationary position on the footpath. The use of a box on a pole or any other contrivance to reach upper windows or the tops of conveyances is prohibited. Not more than two collectors may be together, and they must be thirty yards from the next collector. No payment by way of reward may be made to any collector, and within a month of the collection or sale a statement giving full particulars in a form specified in a printed schedule must be rendered to the advisory committee.

CLEANLINESS IN THE PRODUCTION AND HANDLING OF MILK.

A circular which is being issued by the Ministry of Health to county councils and sanitary authorities draws attention to the new Milk and Dairies Order and the Public Health (Imported Milk) Regulations, which supersede former dairies orders. It points out that the Milk and Dairies Order seeks "to lay greater stress on cleanliness in all operations connected with the production and handling of milk (including the care of the cow) than upon the structure of buildings."

Local authorities are reminded that one veterinary officer may act under the Milk and Dairies Act and also under the Tuberculosis Order with convenience and economy. As to that part of the new Order which is enforceable by sanitary authorities, the Ministry remarks that officers appointed under the Sale of Food and Drugs Act "will have opportunities for observing the conditions under which milk is consigned by rail (including the condition and marking of churns), and . . . where they have any reason to suspect any contravention of the provisions of the Order they should notify the responsible sanitary authority." The need for co-operation between all authorities and their officers in the administration of the Order is emphasized.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Romer.
M'nd'y July 26	Mr. Synge	Mr. Jolly	Mr. Bloxam	Mr. Hicks Beach
Tuesday .. 27	Ritchie	More	Hicks Beach	Bloxam
Wednesday 28	Bloxam	Synge	Bloxam	Hicks Beach
Thursday . 29	Hicks Beach	Ritchie	Hicks Beach	Bloxam
Friday .. 30	Jolly	Bloxam	Bloxam	Hicks Beach
Saturday .. 31	More	Hicks Beach	Hicks Beach	Bloxam

Date	Mr. Justice Astbury.	Mr. Justice Lawrence.	Mr. Justice Russell.	Mr. Justice Tomlin.
M'nd'y July 26	Mr. Ritchie	Mr. Synge	Mr. Jolly	Mr. More
Tuesday .. 27	Synge	Ritchie	More	Jolly
Wednesday 28	Ritchie	Synge	Jolly	More
Thursday . 29	Synge	Ritchie	More	Jolly
Friday .. 30	Ritchie	Synge	Jolly	More
Saturday .. 31	Synge	Ritchie	More	Jolly

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 5%. Next London Stock Exchange Settlement, Thursday, 12th August, 1926.

	Middle Price 21st July	Interest Yield. £ s. d.	Yield with Redemption. £ s. d.
English Government Securities.			
Consols 2½%	55⅝	4 10 0	—
War Loan 5% 1929-47	101 1/32	4 19 0	4 19 0
War Loan 4½% 1925-47	95⅝	4 14 6	4 17 6
War Loan 4% (Tax free) 1929-47	100¾	3 19 6	3 19 0
War Loan 3½% 1st March 1928	98¼	3 11 0	4 17 0
Funding 4% Loan 1960-90	86⅜	4 12 6	4 13 6
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	93⅜	4 5 6	4 8 6
Conversion 4½% Loan 1940-44	96⅛	4 13 6	4 16 0
Conversion 3½% Loan 1961	76	4 12 0	—
Local Loans 3% Stock 1921 or after	63 5/32	4 15 0	—
Bank Stock	257	4 13 0	—
India 4½% 1950-55	90¾	4 19 0	5 2 6
India 3½%	69⅜	5 0 0	—
India 3%	59¾	5 0 0	—
Sudan 4½% 1939-73	92	4 18 0	5 0 0
Sudan 4% 1974	85¼	4 13 0	4 17 6
Transvaal Government 3% Guaranteed 1923-53 (Estimated life 19 years)	80½	3 15 0	4 12 6
Colonial Securities.			
Canada 3% 1938	83¼	3 12 6	4 19 0
Cape of Good Hope 4% 1916-36	92½	4 7 0	5 1 6
Cape of Good Hope 3½% 1929-49	79	4 9 0	5 2 0
Commonwealth of Australia 5% 1945-75	99½	5 0 6	5 1 0
Gold Coast 4½% 1956	94⅜	4 15 6	4 18 6
Jamaica 4½% 1941-71	92½	4 17 0	4 17 0
Natal 4% 1937	91⅜	4 7 0	4 19 0
New South Wales 4½% 1935-45	90½	5 0 6	5 5 0
New South Wales 5% 1945-65	98¾	5 1 0	5 2 6
New Zealand 4½% 1945	95¼	4 14 0	4 19 6
New Zealand 4% 1929	97	4 3 0	5 1 6
Queensland 3½% 1945	76	4 12 6	5 10 0
South Africa 4% 1943-63	87	4 12 0	4 17 0
S. Australia 3½% 1926-36	85½	4 2 0	5 7 6
Tasmania 3½% 1920-40	83½	4 4 0	5 4 0
Victoria 4% 1940-60	82⅞	4 16 6	5 0 0
W. Australia 4½% 1935-65	90¼	5 0 0	5 2 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corpn.	62½	4 16 0	—
Bristol 3½% 1925-65	74⅜	4 14 0	5 0 0
Cardiff 3½% 1935	87	4 0 6	5 2 6
Croydon 3% 1940-60	67⅜	4 9 0	5 1 0
Glasgow 2½% 1925-40	76½	3 6 0	4 16 0
Hull 3½% 1925-40	74½	4 14 0	5 0 6
Liverpool 3½% on or after 1942 at option of Corpn.	73¾	4 15 0	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	53	4 14 6	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	63½	4 15 0	—
Manchester 3% on or after 1941	62½	4 16 6	—
Metropolitan Water Board 3% 'A' 1963-2003	63¼	4 15 0	4 16 0
Metropolitan Water Board 3% 'B' 1934-2003	65	4 12 6	4 15 0
Middlesex C. C. 3½% 1927-47	79	4 8 6	5 0 6
Newcastle 3½% irredeemable	71½	4 18 0	—
Nottingham 3% irredeemable	62½	4 16 0	—
Plymouth 3% 1920-60	67	4 10 0	5 0 6
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	81	4 19 0	—
Gt. Western Rly. 5% Rent Charge	98¾	5 1 0	—
Gt. Western Rly. 5% Preference	95½	5 5 0	—
L. North Eastern Rly. 4% Debenture	77½	5 3 0	—
L. North Eastern Rly. 4% Guaranteed	75½	5 6 0	—
L. North Eastern Rly. 4% 1st Preference	65	6 2 6	—
L. Mid. & Scot. Rly. 4% Debenture	79	5 1 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	78	5 3 0	—
L. Mid. & Scot. Rly. 4% Preference	73	5 9 6	—
Southern Railway 4% Debenture	80	5 0 0	—
Southern Railway 5% Guaranteed	99½	5 0 6	—
Southern Railway 5% Preference	95½	5 5 0	—